

THE
DEBATE 18
At Large,

BETWEEN THE
LORDS and COMMONS,
AT THE
FREE CONFERENCE,

Held in the
Painted Chamber,

IN THE
SESSION of the CONVENTION,
Anno 1688.

Relating to the Word,

ABDICATED,
AND THE
Vacancy of the THRONE,
In the COMMONS Vote.

The Second Edition Corrected.

L O N D O N

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DEBATE

At Large

BETWEEN

THE LORDS AND COMMONS

IN PARLIAMENT

THE CONFERENCE

Printed Chamber

IN THE

Session of the Convention

1882

Relating to the World

ABSTRACTED

AND THE

History of the Province

in the Commonwealth

THE HISTORY OF THE PROVINCE

OF THE

Province of the Province

(1882)

The DEBATE at Large, &c.

Martis 22 die Januarii, 1688.

IN the Convention met, upon his Highness the Prince of Orange's Letters, this Day in the House of Commons, A Motion being made that the House would appoint a Day, to take into Consideration the Condition and State of the Nation.

Resolved, Nemine Contradicente, That the House on Monday next, at Ten of the Clock in the Morning, take into Consideration the State and Condition of the Nation.

Luna 28 die Januarii, 1688.

The House then (according to the Order of *Tuesday* last) proceeded to take into Consideration the State, and Condition of the Nation.

Resolved, That the House do now Resolve it self into a Committee of the whole House, to take into Consideration the State and Condition of the Nation.

Mr. *Speaker* left the Chair.

Mr. *Hamden* took the Chair of the Committee.

Mr. *Speaker* Reassumed the Chair.

Mr. *Hamden* Reported from the Committee of the whole House that, having taken into Consideration the Condition and State of the Nation, they had agreed upon a Resolve; which he Read in his Place, and then deliver'd the same in at the Clerk's Table, where the same being Read, was as followeth.

Resolved, That King James the Second, having Endeavoured to Subvert the Constitution of the Kingdom, by Breaking the Original Contract between King and People; and, by the Advice of Jesuits, and other Wicked Persons, having Violated the Fundamental Laws, and With-drawn himself out of the Kingdom, hath Abdicated the Government, and that the Throne is thereby Vacant.

Resolved, That this House do agree with the Committee, That King James the Second, having Endeavoured to Subvert the Constitution of the Kingdom, by Breaking the Original Contract between King and People; and by the Advice of Jesuits, and other Wicked Persons, having Violated the Fundamental Laws, and having Withdrawn himself out of the Kingdom, hath Abdicated the Government; and that the Throne is thereby Vacant.

Ordered, That Mr. Hamden do carry up the said Resolution to the Lords for their Concurrence. And it was carried up to the Lords, by Mr. Hamden, accordingly.

Sabbat. 2^d die Feb. 1688.

A Message from the Lords to the Commons, by Sir Miles Cook and Mr. Methwin, Two Masters in Chancery attending the House of Lords.

Mr. SPEAKER,

The Lords have considered of the Vote of this House of the 28th of January last, to which they Concur with Amendments; unto which Amendments they desire the Concurrence of this House.

The Amendments made by the Lords to the Votes sent up to them from this House, the 28th of January, were Read and are as followeth,

L. 8. Instead of the Word *Abdicated* Read *Deserted*.

L. 9. Leave out these Words, *And that the Throne is thereby Vacant*.

Lunc 4 die Feb. 1688.

To the First Amendment, Proposed by the Lords to be made to the Vote of the Commons, of the 28th of January, Instead of the Word *Abdicated*, to insert the Word *Deserted*, the Commons do not agree; because the Word *Deserted* doth not fully express the Conclusion necessarily infer'd from the Premises, to which your Lordships have agreed; for your Lordships have agreed, *That King James the Second hath Endeavoured to Subvert the Constitution of the Kingdom, by Breaking the Original Contract between King and People, and hath violated the Fundamental Laws, and Withdrawn himself out of the Kingdom.* Now the Word *Deserted* respects only the Withdrawing, but the Word *Abdicated* respects the Whole; for which Purpose the Commons made Choice of it. The Commons do not agree to the Second Amendment, to leave out the Words, *And that the Throne is thereby Vacant*.

1st. Because they conceive, that, as they may well infer from so much of their own Vote as your Lordships have agreed unto, *That King James the Second has Abdicated the Government and that the Throne is thereby Vacant*; so that if they should admit your Lordships Amendment, *That he hath only Deserted the Government*; yet, even thence, it would follow that the Throne is Vacant as to King James the Second, *Deserting the Government*, being, in true Construction, *Deserting the Throne*.

2^{dly}, The Commons conceive they need not Prove unto your Lordships, That, as to any other Person, *the Throne is also Vacant*; your Lordships (as they conceive) having already-admitted it, by your Addressing to the Prince of Orange the

the 25th of December last, To take upon him the Administration of Publick Affairs, both Civil and Military; and to take into his Care the Kingdom of Ireland, till the meeting of this Convention. In Pursuance of such Letters, and by your Lordships renewing the same Address to his Highness, (as to Publick Affairs: And the Kingdom of Ireland,) since you met, and by Appointing Days of Publick Thanksgivings to be Observed throughout the whole Kingdom, all which the Commons conceive do imply that it was your Lordships Opinion, That the Throne was Vacant, and to signify so much to the People of this Kingdom.

3dly, It is from those who are upon the Throne of England (when there are any such) from whom the People of England ought to receive Protection; and to whom, for that Cause, they owe the Allegiance of Subjects; but there being none now from whom they expect Regal Protection, and to whom, for that Cause, they owe the Allegiance of Subjects, the Commons conceive, *The Throne is Vacant.*

Resolved, That the Earl of Wiltshire do go up to the Lords to desire a Conference upon the Subject matter of the Amendments.

The Earl of Wiltshire Reports, That, he having attended the Lords, to desire a Conference, they had given Answer, That they did consent to a Conference immediately in the Painted Chamber.

Resolved, That the Committee to whom it was referred to prepare Heads of Reasons at a Conference with the Lords, be the Managers of the said Conference.

Mr. Hamden, Reports, from the Committee appointed to Manage the Conference with the Lords, That they had Attended the Lords at the Conference and Communicated unto their Lordships the Reasons why this House doth not Concur with their Lordships in the said Amendments.

Martis 5 die Feb. 1688.

Mr. Hamden Reports from the Conference with the Lords, that the Earl of Nottingham spoke to this Effect,

" That the Lords had desired this Conference with the
 " Commons, that they might be as happily United to the
 " Commons in Opinion, as they are inseparable in their In-
 " terest; and that they are, at this time, uneasy that they
 " cannot Concur with the Commons in every thing; because
 " it is of so great a Concern to the Nation, and from so great
 " and Wise a Body. That he then delivered what the Lords
 " had done in Reference to the Subject Matter of the last Con-
 " ference, and said, " That the Lords did insist upon the First
 " Amendment of the Vote of the House of Commons of the
 " 25th of January last, instead of the Word *Abdicated*, to
 " have the Word *Deserted*,

1st. " Be-

1st. " Because the Lords do not find, that the Word *Abdicated* is a Word known to the Common Law of England, and the Lords hope the Commons will agree to make use of such Words only, whereof the Meaning may be understood according to Law, and not of such as will be liable to doubtful Interpretations.

2^{dly}, " Because in the most common Acceptation of the Civil Law, *Abdication* is a Voluntary Express Act of Renunciation, which is not in this Case, and doth not follow from the Premises, That King James the Second, by having With-drawn himself, after having endeavoured to Subvert the Constitution of the Government, by Breaking the Original Contract between King and People, and having violated the Fundamental Laws, may be more properly said to have *Abdicated*, than *Deserted*.

He said the Lords did Insist on the Second Amendment, to leave out the Words, *And that the Throne is Vacant*, for this Reason:

" For that although the Lords have agreed, that the King has *Deserted* the Government, and therefore have made Application to the Prince of Orange, To take upon him the Administration of the Government, and thereby to Provide for the Peace and Safety of the Kingdom, yet there can be no other Inference drawn from thence, but only that the Exercise of the Government by King James the Second is Ceased; so as the Lords were, and are willing, to secure the Nation against the return of the said King into this Kingdom; but not that there was either such an *Abdication* by him, or such a vacancy in the Throne, as that the Crown was thereby become *Elective*, which they cannot agree.

I. " Because, by the Constitution of the Government, the Monarchy is Hereditary, and not Elective.

II. " Because no Act of the King alone can Bar, or Destroy the Right of his Heirs to the Crown; and therefore in Answer to the third Reason alledg'd by the House of Commons, If the Throne be vacant of King James the Second, Allegiance is due to such Person as the Right of Succession doth belong to.

The Question being put that this House do agree with the Lords in the said First Amendment.

It passed in the Negative.

The Question being put that this House do agree with the Lords in the said Second Amendment.

The House Divided.

The Yea's go forth.

The Tellers for the Yea's, Sir Joseph Tredenham, and Mr. Gwyn. 151.

The Tellers for the No's, Mr. Coss, and Mr. Herbert. 282.

And

And so it was Resolved in the Negative.

Resolved, That a free Conference be desired with the Lords upon the Subject matter of the last Conference.

Ordered, That it be Referred unto,

Sir Robert Howard, Mr. Poleson, Mr. Paul Foley, Mr. Serj. Maynard, Mr. Serj. Holt, Lord Faulkland, Sir George Treby, Mr. Sommers, Mr. Garraway, Mr. Buscoven, Sir Thomas Littleton, Mr. Palmer, Mr. Hamden, Sir Henry Capel, Sir Thomas Lee, Mr. Sachverell, Major Wildeman, Colonel Birch, Mr. Ayres, Sir Rich. Temple, Sir Henry Goodrick, Mr. Waller, Sir John Guyes, To Manage the Conference.

Ordered, That Mr. Dolben do go up to the Lords, and desire a free Conference with the Lords upon the Subject Matter of the last Conference.

Mr. Dolben Reported, That he having (according to the Order of this House) attended the Lords to desire a Free Conference with their Lordships, upon the Subject Matter of the last Conference, they had agreed to a Free Conference presently in the Painted Chamber. And the Managers went to a Free Conference, at the Free Conference in the Painted Chamber.

Mr. HAMDEN's Speech.

MY Lords, the Commons have desired this Free Conference from your Lordships upon the Subject Matter of the last Conference, that they may make appear unto your Lordships, that it is not without sufficient Reason, that they are Induced to Maintain their own Vote, to which your Lordships have made some Amendments; and that they cannot agree to those Amendments made by you Lordships for the same Reasons.

My Lords, the Commons do very readily agree with your Lordships, That it is a Matter of the greatest Concernment to the Kingdom in general, its future Peace, and happy Government, and the Protestant Interest, both at Home and Abroad, that there be a good Issue and Determination of the Business now in Debate between Both Houses, and a speedy one as can consist with the Doing of it in the best manner. This way of Intercourse between Both Houses by Free Conference, where there is full Liberty of Objecting, Answering, and Replying, the Commons think the best Means to attain this End, and to Maintain a good Correspondence between Both Houses, which is so necessary at all Times, but more especially in the present Conjuncture; this my Lords will bring Honour and Strength to the Foundation that shall be laid
after

after our late Convulsions, and Discourage our Enemies from Attempting to Undermine it.

It is true, my Lords, the present Difference between your Lordships and the Commons is only about a few Words; but the Commons think their Words so Significant to the Purpose for which they are used, and so proper to the Case unto which they are applied, that in so Weighty a matter as that now in Debate, they are by no means to be parted with.

The Word *Abdicated* the Commons conceive is of larger Signification than the Word your Lordships are pleased to use *Desert*; but not too large to be applied to all the Recitals in the Beginning of the Commons Vote, to which they meant it should be applied. Nor ought it to be Restrained to a Voluntary Express Resignation, only in Word or Writing, Overt-Acts there are that will be Significant enough to amount to it.

My Lords, that the Common Law of England is not acquainted with the Word, it is from the Modesty of our Law, that it is not willing to suppose there should be any Unfortunate Occasion of making use of it: And we would have been willing that we should never have had such an Occasion as we have to have Recourse to it. Your Lordships next Amendment is, that your Lordships have left out the last Words in the Commons Vote, *And that the Throne is thereby Vacant*.

My Lords, the Commons conceive it is a true Proposition, and *That the Throne is Vacant*; and, they think, they make it appear that this is no new Phrase; neither is it a Phrase that perhaps some of the old Records may be Strangers to; or not well acquainted with: But they think it not chargeable with Consequences that your Lordships have been pleased to draw from it, *That it will make the Crown of England become Elective*. If the Throne had been full, we know your Lordships would have assigned that, as a Reason of your Disagreement, by telling us who filled it; and it would be known by some Publick Royal Act, which might notify to the People in whom the Kingly Government resided; neither of which hath been done; and yet your Lordships will not allow the *Throne to be Vacant*.

My Lords, I am unwilling to detain your Lordships longer, from what may be better said for your Lordships Satisfaction in these Matters, by those whose Province it is: I am to acquaint your Lordships, That the Commons do agree, it is an Affair of very great Importance. Here are other Gentlemen that are appointed to manage this Conference, and will give their Assistance to bring it, we hope, to a happy Conclusion, in the Agreement of Both Houses, in this so very a Considerable Point.

Mr. SOMMERSET.

My Lords, what is appointed me to speak to, is your Lordships First Amendment, by which the Word *Abdicated*, in the Commons Vote, is changed into the Word *Deserted*; and I am to acquaint your Lordships what some of the Grounds are, that induced the Commons to insist upon the Word *Abdicated*, and not to agree to your Lordships Amendment.

1st. The First Reason your Lordships are pleased to deliver, as for your Changing the Word is, *That the Word Abdicated your Lordships do not find, is a Word known to the Common Law of England; and therefore ought not to be Used: And the next is, That the common Application of the Word amounts to a voluntary Express Act of Renuntiation, which (your Lordships say) is not in this Case, nor what will follow from the Premises.*

My Lords, as to the First of these Reasons, if it be an Objection, that the Word *Abdicated* hath not a known Sence in the Common Law of England, there is the same Objection against the Word *Deserted*; for there can be no Authority, or Book of Law produced, wherein any determined Sence is given to the Word *Deserted*: So that your Lordships first Reason hath the same Force against your own Amendment, as it hath against the Term used by the Commons.

The Words are both *Latin Words*, and used in the best Authors, and both of a known Signification; their Meaning is very well Understood; tho' it be true, their Meaning be not the same: The Word *Abdicate* doth naturally and properly signify *Entirely to Renounce, Throw off, Disown, Relinquish any Thing or Person, so as to have no further to do with it; and that whether it be done by Express Words, or in Writing, (which is the Sence your Lordships put upon it, and which is properly called Resignation or Cession) or, by Doing such Acts as are Inconsistent with the Holding, or Retaining of the Thing; which the Commons take to be the present Case, and therefore made Choice of the Word Abdicate, as that which they thought did, above all others, most properly express that Meaning: And in this latter Sence it is taken by Others, and that it is the true Signification of the Word, I shall shew your Lordships out of the best Authors:*

The First I shall mention is *Grotius de Jure Belli & Pacis, L. 2. C. 4. §. 4. Venit enim hoc non ex jure civili, ex jure naturali, quo quisq; suum potest Abdicare, Et ex naturali Presumptione qua voluisse, qui creditur, quod sufficienter significavit.* And then he goes on, *Recusari Hereditas non tantum verbis, sed etiam re potest, Et quovis indicio voluntatis.*

B

Another

Another Instance, which I shall mention, to shew that for the *Abdicating* a thing, it is sufficient to do an Act which is Inconsistent with the Retaining it, tho' there be nothing of an *Express Renunciation*, is out of *Catvin's Lexicon Juridicum*, where he says, (*Generum abdicat, qui sponsam repudiat :*) He that Divorceth his Wife, Abdicates his Son in Law. Here is an Abdication without *Express Words*; but is by doing such an Act as doth sufficiently signify his Purpose.

The next Author, that I shall Quote, is *Brisonius, de Verborum significatione*, who hath this Passage, *Homo liber qui se ipsum ven it, abdicat se statu suo*, that is, He who sells himself, hath thereby done such an Act as cannot consist with his former Estate of Freedom; and is therefore properly said, *se abdicasse statu suo*.

Budæus, in his Commentaries *ad Legem secundam, de Origine Juris*, Expounds the Words in the same Sence, *Abdicare se Magistratu est idem quod abire panitus Magistratu :*) He that goes out of his Office of Magistracy, let it be in what manner he will, has Abdicated the Magistracy.

And *Grotius*, in his Book *de Jure Belli & Pacis*, L. 1. c. 4. §. 9. seems to expound the Word *Abdicare*, by *manifeste habere pro derelicto*: That is, That he who hath Abdicated any thing, hath so far Relinquished it, that he hath no Right of Return to it. And that is the Sence the Commons put upon the Word: It is an Entire Alienation of the Thing; and so stands in Opposition to *Dicere*: *Dicat qui proprium aliquod facit; abdicat qui alienat*, so says *Præjeus* in his *Lexicon Juris*. It is therefore insisted upon as the proper Word by the Commons.

But the Word *Deserted* (which is the Word used in the Amendment made by your Lordships) hath not only a very doubtful signification; but in the common Acceptance both of the Civil and Canon Law, doth signify only a bare Withdrawing, a Temporary Quitting of a Thing, and Neglect only, which leaveth the Party at Liberty of Returning to it again. *Desertum pro Neglecta*, says *Spigelinus* in his *Lexicon*: But, the Difference between *Disserere* and *Derelinquere*, is expressly laid down by *Bartolus*, upon the 8th Law of the 58th Title of the 11th Book of the Code, and his Words are these, *Nota diligenter, ex hac Lege, quod aliud est Agrum disserere, aliud derelinquere; qui enim derelinquit, ipsum ex Penitentia non revocat: sed qui deseret, intra biennium potest.*

Whereby it appears, my Lords, that that is called *Desertion*, which is Temporary and Relievable: That is called *Dereliction*, where there is no Power of Right to Return.

So in the best Latin Authors, and in the Civil Law, *Deserere Exercitum* is used to signify Soldiers leaving their Colours, *Col. Lib. 12. §. 1.*

And in the Canon Law to *Desert a Benefice*, signifies no more than to be *Non-Resident*; so is Calvin's *Lexicon, Verb. Desert. secund. Canones.*

In both Cases, the Party hath not only a *Right of Returning*; but is *Bound to Return again*: Which, my Lords, as the Commons do not take to be the present Case, so they cannot think that your Lordships do; because it is expressly said, in One of your Reasons given in Defence of the last Amendment, *That your Lordships have been, and are willing, to secure the Nation against the Return of King James*; which your Lordships would not, in Justice, do, if you did look upon it no more than a *Negligent With-drawing*, which leaveth a *Liberty to the Party to Return.*

For which Reasons, my Lords, the Commons cannot agree to the First Amendment, to insert the Word *Deserted* instead of *Abdicated*; because it doth not, in any sort, come up to their Sense of the thing: So, they do apprehend, it doth not reach your Lordships Meaning, as it is expressed in your Reasons; whereas they look upon the Word *Abdicated* to express properly what is to be Inferred from that Part of the Vote to which your Lordships have agreed, *That King James the Second, by going about to Subvert the Constitution, and by Breaking the Original Contract between King and People, and by Violating the Fundamental Laws, and With-drawing himself out of the Kingdom, hath thereby Renounced to be a King according to the Constitution, by Avowing to Govern by a Despotick Power, unknown to the Constitution, and Inconsistent with it; he hath Renounced to be a King according to the Law, such a King as he Swore to be at the Coronation, such a King to whom the Allegiance of an English Subject is due; and hath set up another kind of Dominion, which is to all Intents an Abdication, or Abandoning of his Legal Title, as fully as if it had been done by express Words.*

And, my Lords, for these Reasons the Commons do insist upon the Word *Abdicated*, and cannot agree to the Word *Deserted.*

Mr. Serjeant HOLT.

My Lords, I am commanded by the Commons, to assist in the Management of this Conference, and am to speak to the same Point that the Gentleman did, who spoke last to your Lordships First Amendment.

As to the First of your Lordships Reasons, for that Amendment, (with Submission to your Lordships) I do conceive it not sufficient to alter the Minds of the Commons; or to induce them to change the Word *Abdicated*, for your Lordships Word *Deserted.*

Your Lordships Reason is, *That it is not a Word that is known to the Common Law of England.* But, my Lords, the Question is not to much, Whether it be a Word as Antient as the Common Law, (though it may be too) for that will be no Objection against the Using it, if it be a Word of a known and certain Signification; because that, we think, will justify the Commons making use of it, according to your Lordships own Expression.

That it is an Antient Word, appears by the Authors that have been Quoted, and its frequently met with in the best of *Roman Writers*, as *Cicero*, &c. And by the Derivation from *Dico*, an Antient *Latin Word*.

That now it is a known *English Word*, and of a known and certain Signification with us, I will Quote to your Lordships an *English Authority*, and that is the Dictionary set forth by our Country-man *Minsbaw*, who hath the Word *Abdicate* as an *English Word*, and lays that it signifies to *Renounce*, which is the Signification the Commons would have of it: So that I hope your Lordships will not find Fault with their using a Word that is so Antient in it self, and that hath such certain Signification in our own Language.

Then, my Lords, for that Part of your Lordships Objection, *That it is not a Word known to the Common Law of England*, that cannot prevail; for, your Lordships very well know, we have very few Words in our *Tongue* that are of equal Antiquity with the Common Law; your Lordships know the Language of *England* is altered greatly in the several Successions of Time and the Intermixture of other Nations; and if we should be obliged to make use only of Words then known and in use, what we should deliver in such a *Dialect* would be very Difficult to be Understood.

Your Lordships Second Reason, for your First Amendment in changing the Word *Abdicated* for the Word *Deserted* is, *Because in the most common Acceptation of the Civil Law, Abdication is a Voluntary Express Act of Renuntiation.* That is the general Acceptation of the Word, and, I think, the Commons do so use the Word in this Case, because it hath that Signification: But I do not know, whether your Lordships mean a Voluntary express Act or Formal Deed of *Renuntiation*: If you do so, I confess I know of none in this Case: But my Lords, both in the Common Law of *England*, and the Civil Law, and in common Understanding, there are Express Acts of *Renuntiation* that are not by Deed; for if your Lordships please to observe, the Government and Magistracy is under a Trust, and any Acting contrary to that Trust is a *Renouncing* of the Trust, though it be not a *Renouncing* by Formal Deed: For it is a plain Declaration, by Act and Deed, though not in Writing, that he who hath the Trust, Acting

Acting contrary, is a Disclaimer of the Trust ; especially my Lords, if the Actings be such as are Inconsistent with, and Subversive of this Trust : For, how can a Man, in Reason, or Sense, express a greater *Renunciation* of a Trust, than by the constant Declarations of his Actions to be quite contrary to that Trust ?

This, my Lords, is so plain, both in Understanding and Practice, that I need do no more but Repeat it again, and leave it with your Lordships, *That the Doing an Act Inconsistent with the Being and End of a Thing, or that shall not Answer the End of that Thing, but quite the contrary, that shall be Construed an Abdication, and Formal Renunciation of that Thing.*

Earl of NOTTINGHAM.

Gentlemen, you of the Committee of the Commons, we differ from you indeed about the Words *Abdicated* and *Deserted* ; but the main Reason of the Change of the Word and Difference, is upon the Account of the Consequence drawn in the Conclusion of your Vote, *That the Throne is thereby Vacant* : that is, What the Commons mean by that Expression ? Whether you mean it is so Vacant as to null the Succession in the Hereditary Line, and so all the Heirs to be cut off, which we say will make the Crown *Elective* ? And it may be fit for us to settle that Matter first, and when we know what the Consequence of *The Throne being Vacant* means in the Vote as you Understand it, I believe we shall much better be able to settle the Difference about the Two Words.

Mr. Serjeant MAYNARD.

My Lords, when there is a present Defect of One to Exercise the Administration of the Government, I conceive, the Declaring a Vacancy, and Provision of a Supply for it, can never make the Crown *Elective*.

The Commons apprehended there is such a Defect now ; and, by consequence, a present Necessity for the Supply of the Government, and that will be next for your Lordships Consideration, and theirs afterwards.

If the attempting the utter Destruction of the Subject, and Subversion of the Constitution, be not as much an *Abdication* as the attempting of a Father to Cut his Son's Throat, I know not what is.

My Lords, the Constitution, notwithstanding the Vacancy is the same ; the Laws that are the Foundations and Rules of that Constitution are the same : But if there be, in any
par-

particular Instance, a Breach of that Constitution, that will be an *Abdication*; and that *Abdication* will infer a Vacancy.

It is not that, the Commons do say, *the Crown of England is always and perpetually Elective*; but it is more necessary that there be a Supply when there is a Defect, and the Doing of that will be no Alteration of the Monarchy from a *Successive One to an Elective*.

Lord Bishop of ELY.

Gentlemen, the Two Amendments made by the Lords to the Vote of the Commons, are as to the Word *Abdicated*, and as to the *Vacancy of the Throne*: That *Abdicated* may be Tacitely by some *Overt-Acts*, that Gentleman, (I think I may name him without Offence) Mr. Sommers, very truly did alledge out of *Grotius*: But, I desire to know, Whether *Grotius*, that great Author, in treating on this Subject, doth not interpose this Caution, *If there be a yielding to the Times: If there be a going away, with a Purpose of seeking to Recover what is, for the present Left or Forsaken*: In plain English, *If there were any thing of Force or just Fear in the Case, that doth void the Notion of Abdication*: I speak not of *Male-Administration* now, of that hereafter.

Mr. Serjeant MAYNARD.

But, my Lords, that is not any Part of the Case declared by the Commons in this Vote, when the whole Kingdom, and the *Protestant Religion*, our Laws and Liberties, have been in Danger of being Subverted, an Enquiry must be made into the Authors and Instruments of this Attempt; and if he, who had the *Administration* intrusted to him, be found the Author and Actor in it, What can that be, but a *Renuntiation of his Trust*, and consequently his Place thereby *Vacant*?

My Lords, *Abdication* (under Favour) is an *English Word*; and, your Lordships have told us, the true Signification of it is a *Renuntiation*. We have indeed, for your Lordships Satisfaction, shewn its Meaning in Foreign Authors; it is more than a *Deserting* the Government, or Leaving it with a Purpose of Returning. But, we are not, I hope, to go to learn *English* from Foreign Authors, we can, without their Aid, tell the Meaning of our own Tongue.

If Two of us make a mutual Agreement, to Help and Defend each other from any one that should Assault us in a Journey, and that he that is with me turns upon me and Breaks my Head, he hath, undoubtedly, *Abdicated* my Assistance and Revoked.

Lord

Lord Bishop of E. L. Y.

The Objection of the Lords against the Word *Abdicated* is, That it is of too large a Signification for the Case in Hand. It seems to be acknowledged, that it reacheth a great Way; and therefore the Lords would have a Word made use of, which (by the Acknowledgment of that Learned Gentleman) signifieth only, *The Ceasure of the Exercise of a Right*.

If there be such a Defect as hath been Spoken of, it must be Supplied; there is no Question of that.

And I think we have, by another Vote, declared, That it is inconsistent with our Laws, Liberties, and Religion, to have a Papist to Rule over this Kingdom. Which I take to be only as to the Actual Exercise and Administration of the Government.

It is *Gratius* his Distinction between a *Right*, and the *Exercise of that Right*; and, as there is a Natural Incapacity for the Exercise, as Sickness, Lunacy, Infancy, doating Old Age, or an incurable Disease, rendring the Party unfit for Human Society, as *Leprosy*, or the like; so I take it, there is a Moral Incapacity; and that I conceive to be a full irremoveable Perswasion in a false Religion, contrary to the Doctrine of *Christianity*.

Then there must be a Provision, undoubtedly, made for supplying this Defect in the Exercise, and an intermediate Government taken care for; because become necessary for the Support of the Government, if He to whom the Right of Succession doth belong makes the Exercise of his Government unpracticable, and our Obedience to him, consistently with the Constitution of our Religion, impossible; but that, I take it, doth not alter that Right, nor is an *Abdication* of the Right.

Abdication, no doubt, is by Adaption an *English* Word; and well known to *English* Men conversant in Books: Nor is it objected, that it is not a Word as antient, and it may be more antient than the Common Law of *England*; we find it in *Cicero*, and other old *Roman* Writers.

But, as to *Cicero*, I would observe that there is a double Use of the Word; sometimes it is mentioned with a Preposition, and then it signifies the *Renouncing an Actual Exercise of a Right*, as *Abdicare a Triumpho*: And sometimes it hath the Accusative Case following it, and then it signifies the *Renouncing of the very Right*, as that which was mentioned, *Abdicare Magistratum*; so that the Signification (as the Lords in their Reason) is doubtful: And such Words, we hope, the Commons will not think fit to use in a Case of this Nature and Consequence, as ours now in Debate.

And

And besides, the Lords apprehend, that great Inconveniences will follow upon the Use of this Word, if it mean a *Renouncing absolutely of the Right*.

It seems the Commons do not draw the Word *Abdicated* from his withdrawing himself out of the Kingdom; for then *Deserted* would (no doubt) have answered. That *Abdication* is the same, whether a Man go out of the Kingdom or stay in it; for it is not to be esteemed according to the Place, but the Power.

If a Man stays in the Kingdom, this is *Abdicare* with a Preposition, *to Abdicate the Exercise of the Government*, but not *the Right of Governing*, according to the Constitution; and to such an *Abdication* (if it be so declared) my Lords, I believe, may soon agree.

Then, Gentlemen, there is another Distinction in those Authors that writ concerning this Point, which are chiefly the *Civilians*; there may be an *Abdication* that may *Forfeit the Power of a King only*; and there may be One that may *Forfeit both That and the Crown too*. It is a Distinction indeed in other Words, but to the same Sense: I will tell you presently why I use it.

Those *Abdications* that are of *Power only*, are *Incapacities*; whether those I call Natural and Involuntary, as Defects of Sense, Age, or Body, or the like; or Moral and Voluntary, as Contrariety in Religion; an Instance whereof there was lately in *Portugal*, which was a *Forfeiture only of the Power*, and not of the *Name and Honour of a King*; for though the *Administration* was put into the Younger Brother's Hand, the Patents and other Publick Instruments ran in the Elder Brother's Name.

This is, without all doubt, naturally an *Abdication* in the full extent of the Word; nor do I here (as I said) consider, whether that the King be gone out of the Kingdom, or stay in it; but only, whether he be fit for the *Administration*, which must be provided for, be He here, or gone away.

But the highest Instance of an *Abdication* is, when a Prince is not only unable to execute his Power, but Acts quite contrary to it; which will not be answered by so bare a Word as *Endeavour*.

I take these to be all the Distinctions of *Abdications*.

Now if this last Instance of an *Abdication of both Power and Right*, take Place in a succeeding Monarchy, the Consequence will be, That there is a *Forfeiture of the whole Right*; and then that *Hereditary Succession* is cut off; which, I believe, is not intended by the Commons: There is indeed one Instance of the Use of such an *Abdication* in Monarchy, and that is, that of *Poland*; and such an *Abdication* there makes the *Throne Vacant*; and those with, and in whom the Power is invested of making

making Laws, (to wit the Senate) appoint One to fill it : But that, and whatever other Instances of the like Kind, these may be all of *Elective Kingdoms* ; for though some of them are, or may be in *Kingdoms* now *Hereditary*, yet they were, in those Times, *Elective*, and since altered into *Hereditary Successions*.

But here is One thing that is mentioned in this Vote, which I would have well considered, for the Preservation of the *Succession*, and that is the *Original Compact* : We must think sure that meant of the *Compact*, that was made at the first Time, when the Government was first instituted, and the Conditions that each Part of the Government should observe on their Part, of which this was the most Fundamental, *That King, Lords, and Commons, in Parliament assembled, should have the Power of making New Laws, and altering of Old Ones* : And that being one Law which settles the *Succession*, it is as much a Part of the *Original Compact* as any : Then if such a Case happens, as an *Abdication* in a *Successive Kingdom*, without doubt, the *Compact* being made to the *King, his Heirs, and Successors*, the *Disposition of the Crown* cannot fall to us, till all the *Heirs* do *Abdicate* too. There are indeed many Examples, and too many Interruptions in the *Lineal Succession* of the Crown of *England* : I think, I can instance in Seven since the Conquest, wherein the *Right Heir* hath been put by : But that doth not follow, that every Breach of the First *Original Contract*, gives us Power to *Dispose* of the *Lineal Succession* ; especially, I think, since the Statutes of *Queen Elizabeth*, and *King James the First*, that have Established the Oath of *Allegiance* to the *King, his Heirs, and Successors*, the Law is stronger against such a *Disposition* : I grant that from *King William the First*, to *King Henry the Eighth*, there has been Seven Interruptions of the *Legal Line of Hereditary Succession* ; but, I say, those Statutes are made since that Time, and the making of New Laws being as much a Part of the *Original Compact*, as the observing Old Ones, or any thing else, we are obliged to pursue those Laws, till altered by the *Legislative Power*, which singly, or joyntly, without the Royal Assent, I suppose, we do not pretend to ; and these Laws being made since the last Interruption, we are not to go by any Precedent that was made before the making those Laws.

So that all that I conceive ought to be meant by our Vote is, *But a setting aside the Person that Broke the Contract : And, in a Successive Kingdom, an Abdication can only be a Forfeiture, as to the Person himself.*

I hope, and am perswaded, that both Lords and Commons do agree in this, *Not to break the Line of Succession, so as to make the Crown Elective* : And, if that be declared, that this *Abdication* of *King James the Second* reacheth no farther than himself, and that it is to continue in the *Right Line of*

Succession, that, I hope, will make all of one Mind in this important Affair.

Earl of CLARENDON.

As I remember, Mr. Sommers, who spoke to the Signification of the Word *Abdicated*, did Quote *Grotius*, *Calvin's Lexicon*, and other Civil Lawyers, where the express Words make it to be a *Voluntary Act*; and so are all the Instances that ever I read or heard of; that is, there either was some *Formal Deed of Renunciation*, or *Resignation*; or some *Voluntary Act done of the Party's own*; and such whereby they have shewn they did Divest themselves of the Royalties.

I think truly, Gentlemen, it is very apparent that the King, in this Case, hath done nothing of this Nature: It is indeed said by that learned and ingenious Gentleman, Mr. Sommers, That it may arise from the Facts, that in the Vote it has been declared he hath done, *Breaking the Fundamental Laws, and the Original Contract: and endeavouring to Subvert the Constitution of the Kingdom.* I will not discourse the Particulars that have been alledged to make out this Charge; but I may say this much in General, That this *Breaking the Original Contract*, is a Language that hath not been long used in this Place; nor known in any of our Law Books, or Publick Records. It is sprung up, but as taken from some late Authors, and those none of the best received; and the very Phrase might bear a great Debate, if that were now to be spoken to. Mr. Sommers did likewise speak something to the particular Case, and the Grounds of the Vote; he said, *The King is bounded by Law, and bound to perform the Laws made, and to be made.* That is not denied; I would take Notice, that his Obligation thereunto doth not proceed from his Coronation Oath; for our Law saith, *He is as much King before he is Crowned, as he is afterwards: And there is a Natural Allegiance due to him from the Subjects immediately upon the Descent of the Crown upon him.* And though it is a very requisite Ceremony, to put him under a farther Obligation by the Conscience of his Oath; yet I think it will not, nor can be denied but that, as King, he was bound to observe the Laws before; and no Body will make that Oath to be the *Original Contract*, as I suppose.

But, my Lords and Gentlemen, if you do admit that it was never intended by the House of Commons, to relate any farther than to this King himself, I believe my own Opinion would concur to secure us against his Return to Govern us: But then, Why is there such a Contention about a Word? Doth all this imply more than *Desertion*?

But it is said, that *Abdication* doth imply a *perfect Renunciation*, which I cannot see how it is in this Case, so as to leave

us at Liberty to supply as we please, and Break the Line of Succession.

Mr. Serjeant Maynard says, That it is not indeed to make the Government perpetually Elective. I would know what he means by Perpetually: Our breaking through the Line now, by a Choice out of the Lineal Courie, is an Alteration and a Precedent: And why may not others take the same Liberty we do? And will not that make it Perpetually Elective?

But truly, I think, no Act of ours can alter the Lineal Succession; for, by all the Laws we have now in Being, our Government appears to be Hereditary in a Right Line of Descent: And upon any Descent, when any one cealeth to be King, Allegiance is by Law due to his Legal Heir, as Successor, as well before Coronation, as after.

I was in great Hopes that you would have offer'd something in Answer to one of my Lord's Reasons against that part of the Vote which declares, *The Throne to be Vacant.*

That no Act of the King's alone can Bar or Destroy the Right of his Heir to the Crown, which is Hereditary, and not Elective, And then, if this Matter goes no farther than King James the Second, in his own Person, How comes the Vacancy and the Supply to be Devolved upon the People? For if he only be set aside, then it is apparent, whether the Crown is to go, to the Person that hath the next Right of Succession; and consequently there is no Vacancy.

Earl of NOTTINGHAM.

Gentlemen, I would not protract Time, which is now so necessary to be husbanded; nor perplex Debates about any Affair like that which lies now before us: It is not a Question barely about Words, but Things, which are now disputing.

The Word *Abdicated*, it is agreed by Mr. Sommers, is a Word of Art; and he hath told us what its Signification is, from those that are skilled in the Art to which it belongs: He doth acknowledge that it is no Law-word among *English* Lawyers; nor known to the Common Law: But then, he saith, neither is the Word, used by the Lords, *Deserted*.

I agree to him, that neither the one or the other are Words used in our Law; but the Inference I would draw thence is this, That we have no Words applicable to this Case; because we never before had such a Case; and we must not draw Inferences of Law in such a Case, that are not deducible from Rules well known in our Laws.

I will not Dispute what the Sense of the Word *Abdication* is in the *Civil Law*; but that it is a *Civil Law* Word is agreed to by me; and if it be, for that Reason I am against using

of it; because I am so much in Love with our own Laws, that I would use no Words in a Case that so much concerns our Legal Constitution, but what are fetched from thence.

I hope I shall never see our old Laws altered; or if they be, God forbid we should be the voluntary Agents in such an Alteration.

But then we are told the Word *Deserted* doth not reach our Case; because the Signification of the Word is but a *Temporary Leaving or Forsaking of his Power, which he may Reassume*; nay, *which in some Cases there is a Duty upon him to Return unto*. If that were all, Mr. Sommers hath given himself an Answer to that Objection, out of what he alledges of the Lords Reasons, who have declared, that they are willing *To secure the Nation against the Return of King James into this Kingdom; and will therefore concur with the Commons in any Act that shall be thought necessary to prevent such his Return*: so that it should seem we were agreed in that Matter; and if that were the Point, we should find Words proper soon enough to express our Meaning by. But I find neither of these Words will, on the one side or on the other, be allowed to signify this Meaning; therefore we should (as I take it) come presently to think of some other that would. But the Reasons why my Lords did chiefly insist upon the Alteration of the Word *Abdicated*, was, *Because they did apprehend, that it being a Word not known to our Laws, there might be other Inferences drawn from it than they do apprehend our Laws will Warrant, from the Case, as it is stated in the Fact of this Vote; and, as they conceive, is done in the concluding of the Throne's being Vacant*.

Therefore, I think, it would shorten the present Debate, if we did settle that Point first; and, as we frequently in Parliamentary Proceedings, Postpone this, and that Paragraph in a Bill, till some others that may be thought fit to be determined first be agreed to; so we should Postpone the Debate about the Word *Abdicate*, till the *Vacancy of the Throne* be settled; for if we were sure that the Throne were, or were not Vacant, we should easily light upon what Word were proper to be used in this Case.

I should therefore propose, that we might Debate that first; because if there be an *English* Word of known Signification in our Law, which should signify no more than *Renouncing for a Man's self*; and which would not amount to so much as *Setting aside the Right of Others*, that Word may be used; and, if no other, the Word *Renouncing* it self may be taken, which would be best agreed to.

Acting against a Man's Trust (says Mr. Serjeant Holt) is a *Renunciation of that Trust*. I agree it is a *Violation of his Trust to Act contrary to it*; and he is accountable for that *Violation*,

to Answer what the Trust suffers out of his own Estate : But I deny it to be presently a *Renuntiation* of the Trust, and that such a one is no longer a Trustee.

I beg his Pardon if I differ from him in Opinion, whom I acknowledge to have much more Learning in his Profession than I can pretend unto : But if the Law be, as he says, in a *private Case*, then I must beg leave to forbear giving my Opinion in a *Case* of this *publick Nature* that is now before us, till I know what such a *Trust* is, and what the Law says in such a *Case*.

If indeed you do pretend *That the Throne is Vacant*, and both Houses agree to that Conclusion, I think it will be no matter what Word is used about it : But, if we do not agree to that Conclusion, I think it will be afterwards easie to shew which is the fittest Word to be stood upon ; or to agree upon some other.

I pray therefore (to shorten the Debate) that you Gentlemen would Speak to this Point first ; and when that is resolved, I hope we shall easily come to an Agreement about the other.

Sir GEORGE TREBY.

I think, my Lords, that we may not consent to begin at the End, and first to enquire of the Conclusion, before the Premises are settled : For the *Vacancy of the Throne* follows, as an Inference drawn from the Acts of the King's, which are express'd most fully by the Word *Abdication* ; and to enquire what the Consequence is, when the Fact is doubtful, from which the Consequence is to ensue, is beginning at the wrong End ; till we state the Fact, we can assign no Consequence at all to it : Therefore, my Lords, I think the present Debate is to begin, where the Difference between the Two Houses doth begin, and that is at the Word *Abdicated* ; and when that is over, we shall regularly come to the other Point in Difference.

We are gone back too far, when we offer to enquire into the *Original Contract*, Whether any such thing is known or understood in our Law or Constitution ? or, Whether it be new Language amongst us ? And I offer this to your Lordships Consideration for Two Reasons,

First, It is a Phrase and thing used by the Learned Mr. Hooker, in his Book of *Ecclesiastical Polity*, whom I mention as a valuable Authority, being one of the best Men, the best Church Men, and the most Learned of our Nation in his time, and his Works are very worthily recommended by the Testimony of King Charles the First ; He alloweth, *That Government did Originally begin by Compact and Agreements.*

But

But I have yet a greater Authority than this to influence this Matter, and that is your Lordships own, who have agreed to all the Vote but this Word *Abdicated*, and the *Vacancy of the Throne*. And therefore so much is enough to be said to that; and go back to Debate what is not in Difference, is to confound our selves, instead of endeavouring to compose Differences.

And truly, my Lords, by what is now Proposed, I think, we are desired to go as much too far Forwards, when the *Vacancy of the Throne* is proposed to be the Question to be first Disputed before the *Abdication*, from which it is Inferred.

But sure I am, it is very much beyond what the Vote before us doth lead us unto, *To talk of the Right of those in the Succession*: For that goes farther than the very last part of the Vote; and it is still to lead us yet farther, to say any thing about making the *Crown Elective*: For, I hope, when we come to answer your Lordships Reasons, we shall easily make it out, that it is not in this Case; neither was there any Occasion given by this Vote to infer any such thing: We shall therefore keep to the Points as they are both in order of Place in the Vote, and of Reason in the Thing; and, as we have done hither, to speak to the Words *Abdicated* and *Deserted*, the Words to be Disputed about in the First Place. Another Lord did give One Reason against the using the Word *Abdicated*, *Because it is a Word belongs to the Civil Law*; and said, *He would by no means exchange our own English Common Law for that*. I entirely concur with that Noble Lord in that Point; but he did agree to us also, *That there is no such Word in our Common Law as Deserted*; that is which should signify, by the Stamp the Law puts upon it, any Sense applicable to the Matter in Hand.

Then if we must not use our Word, because unknown to our Common Law; neither must we use your Lordships for the same Reason; and so shall be at an intire Loss what Word to use; and so, indeed, they may well come to consider the Conclusion First, who leave us at Uncertainties on what Terms we are to Discourse; and there cannot be a greater Confusion in any Debate, than to state a Conclusion without the Premises; which we must do, if we cannot agree how to Word the Fact we infer from.

My Lords, I shall not much differ from what, in general, has been said concerning the Sense of the Word *Abdicated*; for it seems to be agreed on all Hands that it is a *Renuntiation*: Neither will I contend for an *Involuntary Abdication*; because I think it means a *Voluntary Act*: But truly what your Lordships mean, in your Reason against it, by the Word *Express*, I cannot so well understand.

That

That a King may *Renounce* his Kingship, I think, may be made out both in Law and Fact, as well as any other *Renuntiation*; and that, as far as I can discern, by your Lordships Reasons, and this Days Debate hitherto, is not intended to be denied by any: Indeed, some of my Lords have told us, *That there 'tis meant of the Exercise of a Right which may be Renounced, without Renouncing that Right.* Whether that be a true Distinction or no, is not very Material; but if it be, that the very Kingship it self (as including a Right to Govern) may be *Renounced*, and hath been, it will be no Difficulty to make out, By Instances in all Countries, not only where the Crown is, or was *Elective*; but also where it was *Hereditary* and *Successive*.

If a King will *Resign* or *Renounce*, he may do so, as particularly *Char. 5th.*

Earl of PEMBROKE.

That was an exprels Solemn *Renuntiation*.

Sir GEORGE TREBY.

My Lords, the particular manner of doing it, is (I take it) not Matter in Debate just now before us, till it be settled whether a King can *Abdicate* at all, or *Renounce* his *Kingship* at all; this then being granted, *That a King may Renounce, may Resign, may Part with his Office, as well as the Exercise of it*, then the Question indeed is, *Whether this King hath done so or no?*

That he may do it, I take it for granted, it being an Act of the Will: Then let us now enquire into the Facts, as set out in the Vote, Whether this Will of his be manifest? For that you have heard it may be discovered several Ways; the Discovery may be by Writing, it may be by Words, it may be by Facts: *Grotius* himself, and all the Authors that treat of this Matter, and the Nature of it, do agree, *That if there be any Word, or Action that doth sufficiently manifest the Intention of the Mind and Will, to part with his Office, that will amount to an Abdication, or Renouncing.*

Now, my Lords, I beg leave to put this Case, That had King *James the II.* come here into the Assembly of Lords and Commons, and expressed himself in Writing, or Words, to this Purpose, I was Born an Heir to the Crown of *England*, which is a Government limited by Laws made in full Parliament, by King Nobles and Commonalty; and, upon the Death of my last Predecessor, I am in Possession of the Throne; and, now I find, I cannot make Laws without the Consent of the Lords and Representatives of the Commons in Parliament; I cannot suspend
Laws

Laws that have been so made, without the Consent of my People ; this indeed is the Title of Kingship I hold by *Original Contract*, and the Fundamental Constitutions of the Government, and my Succession to, and Possession of, the Crown ; on these Terms is part of that *Contract* ; this part of the *Contract* I am Weary of, I do Renounce it, I will not be oblig'd to Observe it ; nay, I am under an Invincible Obligation not to comply with it ; I will not Execute the Laws that have been made ; nor suffer others to be made, as my People shall desire, for their Security in Religion, Liberty, and Property, which are the Two main Parts of the Kingly Office in this Nation. I say, suppose he had so exprest himself, doubtless this had been a plain *Renouncing* of that *Legal Regular Title* which came to him by Descent : If then He by Particular Acts, such as are enumerated in the Vote, has declared as much, or more than these Words can amount to, then he thereby declared his Will to *Renounce the Government* : He hath, by these Acts mention'd, manifestly declar'd, That he will not Govern according to the Laws made ; Nay, he cannot so do ; for he is under a strict Obligation, (yea the strictest) and Superior to that of the *Original Compact* between King and People, to Act contrary to the Laws, or to Suspend them.

By the Law, he is to Administer Justice ; and to Execute his Office according to the Tenour of those Laws ; and, the Coronation Oath obligeth him likewise to consent to such Laws as the People shall choose ; But, on the contrary, by that Unfortunate Perswasion (in Point of Religion) that he hath Embraced, he is oblig'd to Suspend the Laws that Defend the Established Religion, and to treat it, as it has been (as we well know) called, as the *Northern Heresie* ; and, under pain of Damnation to Extirpate it : And, in order to it, did set and Repeal all the Legal Fences of it, without Consent of Parliament. What the Endeavours and Practices of that kind have been in the last Reign, I suppose, we are not now to be told of, or instructed in ; and if (as is very Plain) this doth amount to a manifest Declaration of his Will, no longer to retain the exercise of his Kingly Office, thus Limited, thus Restrained, then in Common Sense, as well as Legal Acceptation, he has sufficiently declared his *Renouncing of the very Office* : As for his Departure out of the Kingdom, 'tis not material, whether it was Voluntary or Involuntary ; but it is sufficient, that his acting declares, *quo Animo*, he went away, he no longer would pursue what he design'd ; and was so strongly oblig'd unto the contrary, by the Duty of his Office and Relation, and the Obligation of the *Original Contract* ; as likewise his own Coronation Oath, and then he desires no longer to be here.

So that taking both these things together, that he will not ; nay, he cannot (as thus persuaded in Point of Religion) Govern according to Law ; and thereupon hath withdrawn himself out of the Kingdom. It is a manifest Declaration of his express *Renouncing and Parting with his Kingly Office* ; And therefore I cannot depart from insisting upon this word *Abdicated*, which doth so well correspond to the Fact of the Case, and so well expresses the true Meaning of the Commons in their Vote : Nor can we Consent to the *Postponing* this Point, till the other, about *The Vacancy of the Throne*, be determined ; for this is the very Foundation upon which we are to proceed, for *Establishing the Superstructure of the other Conclusion*.

Earl of NOTTINGHAM.

This Learned Gentleman that spoke last, says, *It is necessary to prefer the Premises before the Conclusion, as being the Foundation to the Superstructure*. Truly, I apprehend, that this Word *Abdicated* was part of the Conclusion, and not of the Premises ; the Vote runs thus, *That by Breaking the Original Contract, having endeavoured to subvert the Constitution of the Kingdom, and having withdrawn himself out of the Kingdom, he has Abdicated the Government, and the Throne is thereby Vacant*.

I take it to be (as I say) part of the Conclusion, the other part being joyn'd by a Copulative ; therefore that which is but the other part of the Conclusion, is not to be inferred from the other part of the Premises. But take it to be (as you say) that *The Vacancy of the Throne is another Distinct Conclusion from all that preceded, as the Premises, and therefore it is to be considered last* ; I would then beg the Favour of You, Gentlemen of the House of Commons, to answer me one Question about this Point of *Abdication*. Whether you mean by *Abdication*, a Renouncing for Himself, or for Himself and his Heirs ?

If you mean only *Abdication* for Himself, it will have a different Influence upon the Debate and Resolution of the Case, as to the meaning of that You call the Conclusion ; for then, *How can the Throne be Vacant ?*

But if it be meant for Himself and his Heirs, then I apprehend it is no more than what you say at the End, *That the Throne is indeed Vacant* ; and then this *Abdication* cannot be part of the Premises, but must be the same Thing with, or part of, the Conclusion. I will not undertake to dispute, Whether a King of England may, or may not, Renounce his Kingdom ? For my own Part, I think he can, and I may go so far in Agreement with those that have spoken to this Point, *To yield that he may do it by implicit Acts, contrary to the Kingly Office*.

For a King to say, He will not Govern according to Law; and for a King to Act wholly contrary to Law, and do that which would Subvert the Constitution, is (I think) the same thing.

But then I must say also, That I think there is a Difference between Saying so, and Doing something inconsistent with what the Laws require; for every Deviation from the Law, is a kind of Breach of the Fundamental Laws; for I know no Law, as Laws, but what are Fundamental Constitutions; as the Laws are necessary, so far as to support the Foundation.

But if every Transgression, or Violation of the Law, by the Prince's Connivance or Command, were such a Breach of the Fundamental Laws, as would infer an Abdication, then were it in vain to call any of his Ministers or Officers to account for any such Action.

Then the Action is the King's, and not Their's; and then adieu to the Maxim of, *A King's not doing Wrong*: And we may have Recourse to that other *Respondent Superior*, as more effectual Satisfaction.

I take this Matter to be so plain, as to the Distinction that I have mentioned, that nothing can be more; and it has been thought so essentially necessary to have it clear and manifest, That those Two great Instances of *Edward the Second*, and *Richard the Second*, were express solemn Resolutions, and those confirm'd in *Parliament* by the *Lords and Commons*, by the Act of Deposing them.

Therefore I cannot infer from the Facts enumerated in the *Vote*, That this should be an Abdication for Himself and his Heirs.

But therefore, because in this first Point it is disputable, what is meant by a Word not of known Signification in the Law; it might, I think, do well to consider, what is to be inferred from it: And therefore all I have now said, is only to this purpose, That either Both make one Conclusion, or else the latter cannot be inferred from the former.

Sir GEORGE TREBY.

I beg leave to say something to what this Noble Lord has just spoke unto: When I call this Point of the *Vacancy of the Throne* a Conclusion, I did not mean altogether to exclude Abdication from being a Conclusion from the Particulars enumerated before; for, indeed, it is in the nature of a double Conclusion: One, from the particular Facts mentioned, That thereby King James has Abdicated the Government.

The other, from the Abdication, That thereby the Throne is Vacant: By the instanced Acts, he hath Abdicated the Govern-

vern-

vernment; and by his Abdicating the Government, the Throne is vacant. As to the rest of that which his Lordship is pleased to say, I perceive he does (as he must) agree to me, That a King may Renounce by Acts, as well as Words, or Writings.

But then, I would add, and agree with his Lordship also, That God forbid, every Violation of the Law, or Deviation from it, should be reckon'd an Abdication of the Government. I desire to deliver my self from the Imputation of any such absurd Conceit.

When a King breaks the Law in some few particular Instances, it may be sufficient to take an Account of it from those Evil Ministers that were instrumental in it, why such a thing was done, which was against Laws? Why such a Law was not Executed by them, whose Duty it was to see it put in Execution? You may, in ordinary Cases of breaking the Law, have Remedy in the ordinary Courts and course of Justice.

But sure! He does not take this to be such a Case, or these to be ordinary Violations of the Law: And therefore in extraordinary Cases, the extraordinary Remedy is to be recur'd unto; for the King having a limited Authority, by which he was obliged to keep the Laws made, as to the executive part of the Government, and to observe the Constitution for making such new Laws as the People should find necessary, and present him for his consent; when he doth Violate, not a particular Law, but all the Fundamentals; nor Injure a particular Person in Religion, Liberty, or Property, but falls upon the whole Constitution it self, What doth all this speak?

He therein saith, *I will no more keep within my limited Authority, nor hold my Kingly Office upon such Terms.*

This Title I had by the Original Contract between King and People; I Renounce that, and will Assume another Title to my self; That is, such a Title, as by which I may Act as if there was no such Law to Circumscribe my Authority.

Where shall any Man come to have Redress in such a Case as this, when the Malefactor comes to be Party, unto whom all Applications for Relief and Redress from Injuries should be made, and so he himself shall be a Judge of his own Breaches of Law. This most apparently was the Case as to the *Quo Warranto's*, which was a plain Design to subvert the Constitution in the very Foundation of the Legislature.

It is because the King hath thus violated the Constitution, by which the Law stands, as the Rule both of the King's Government, and the Peoples Obedience, that we say, He hath Abdicated and Renounced the Government; for all other particular Breaches of the Law, the Subject may have Remedy in the ordinary Courts of Justice, or the extraordinary

nary Court of Parliamentary Proceedings: But where such an Attempt as this is made on the Essence of the Constitution, it is not We that have brought our selves into this state of Nature, but Those who have reduced our Legal well-established Frame of Government into such a state of Confusion, as we are now seeking a Redress unto.

Earl of ROCHESTER.

The Lords have given their Reasons why they altered the Word *Abdicated*; because it is a Word not known to the Common Law, and of doubtful Signification: Therefore it would be well if the Commons would please to express their own Meaning by it. I believe my Lords would be induced to Agree, that the King hath *Abdicated*, That is, *Renounced the Government for Himself*. If you mean no farther than that; and if you do so, Why should You not be pleased to explain your selves, that every one may know how the Matter stands, and to preserve a good Correspondence between Both Houses, in such a Juncture and Conjunction as this?

But if you do mean any thing more by it than *Abdication* for himself only, tho' their Lordships should agree to the using of the Word *Abdicated*; yet this would prove a greater Argument against their Agreeing in the other Point, about the *Vacancy of the Throne*: Therefore we would be glad to have you explain your selves what you mean by it.

Then there was a little Pause.

Mr. HAMDEN.

If the Lords have nothing further to offer upon this Point, it will be fit for us to go on to the other Amendment made by the Lords to our Vote.

No Lord offering to speak, the Commons proceeded to the Second Amendment.

Mr. SACHEVERELL.

My Lords, Your Lordships Second Amendment to the Commons Vote, (to wit, To leave out the Words, *And that the Throne is thereby Vacant*) the House of Commons cannot agree with Your Lordships to that Amendment; and they do conceive they have many and great Reasons why they should not do it.

But, my Lords, They very much Wonder how it comes here to be laid upon them (as it seems to be, by one of your Lordships Reasons) That they, by using those Words of *Abdi-*

cation

cation and *Vacancy*, signify an Intention of making an Alteration of the Constitution of the Government.

I would not misrepresent Your Lordships Words, or misrepresent Your Meaning: But You are pleased to say, *That you cannot agree to such an Abdication or Vacancy, as that the Crown should thereby become Elective*: As if the Commons had Thoughts of making the Kingdom Elective, when no such Thing was either meant by Them, or can be deducted from their Words.

But, my Lords, One Reason why they differ from You is, They think (upon the Nature of your Proceedings) they are in the Right, to insist upon their *Vote*, as they sent it up to your Lordships: And they conceive, as to all the Reasons your Lordships have been pleased to give them for your Alterations, not One of them hath so much Argument in them, as they might well expect.

The Commons Reason for their Disagreeing to this Amendment, was, Because they Conceive (that, as they may well infer) from so much of their own *Vote*, as your Lordships have agreed unto, *That King James the Second hath Abdicated the Government; and that the Throne is thereby Vacant*: So, if they should admit your Lordships Amendments, *That he hath only Deserted the Government*; yet, even thence would follow, *It's Vacant, as to King James the Second*: Deserting the Government being, in true Construction, *Deserting the Throne*.

Now, to this they do desire, That your Lordships will consider and see, Whether you give any Answer to this Reason? or rather, Whether you do not leave the Matter still in the Dark; and (in Truth) leave the Nation in a perpetual state of War?

Your Lordships Answer to that, altho' you have agreed, that the King has *Deserted* the Government; and therefore you have made Application to the Prince of Orange, *To take upon him the Administration of the Government, and thereby provide for the Safety and Peace of the Kingdom*: Yet there can be no Inference drawn from thence, but only that the Exercise of the Government by King James the Second, was ceased; so, as the Lords were, and are willing, *To secure the Nation against the Return of the said King into this Kingdom*; but not that there was either such an *Abdication* by him, or *Vacancy* in the Throne, as that the Crown thereby became *Elective*; to which they cannot agree. I desire now to know of your Lordships, What part of this Reason hath given an Answer to what the Commons said in their First Reason; That they may very well conclude from their own *Vote*, as to what your Lordships have therein agreed to, *That the Throne is Vacant, as to King James the Second; Deserting the Government, and Deserting the Throne*, being, in true Construction, the same.

same. Instead of answering this Reason, your Lordships come and apply it here, only to a bare *Giving over the Exercise of the Government by King James*: And, pray, my Lords, let us consider where we are.

If the Case be so, then King James the Second, who has only left the *Exercise*, continues in the *Office*, and is King still; and then all the Acts that we have done in this *Convention*, are wholly (as we conceive) not Justifiable; You are in no Place or Station to relieve your selves, or Nation, in this Exigence; unless you will think of setting up another Regency by your own Authority, without his Consent; which, I conceive, by the Laws of *England*, you cannot do.

What then follows upon all we have done? We have drawn the Nation into a Snare, by the Steps we have taken; and leave all in such an Intricacy, as we have no Power, by Law, to deliver them out of; nor can we answer for what we have done, unless the King should Die, and that would leave the Succession uncertain.

My Lords, I only apply my self, to consider the Reasons of your Lordships, for insisting upon this Second Amendment; because, I conceive, your Lordships have therein given no Answer to the Reason first given by the *Commons*, why they cannot agree to your Lordships Amendment.

Mr. POLEXFEN.

My Lords, your own Reasons (under Favour) do shew, That your Lordships do intend, that the King is still in the Government: This, I think, is most apparent out of your own Reasons.

For, when you have declared, *That the King hath Deserted the Government*, and then say, No Inference can be drawn thence, but only, *That the Exercise of the Government by King James the Second was Ceased*; then you do thereby still say, That King James the Second is in the Government; for if only *the Exercise be Ceased*, the Rights doth still remain: Then am sure we have no Reason to agree with their Lordships in that Point.

Next, my Lords, truly we cannot see how this thing that you would have can be inferred from your own Vote, That only *the Exercise of the Government by King James is ceased*; since you do not say that he deserted the Exercise of the Government?

And if your Lordships had any purpose to express your Meaning by a publick Vote, That only *the Exercise ceased*, surely your Lordships would have put in the word *Exercise* there: But when in your Vote you say, *The Government was deserted*, you cannot mean only the Exercise of it.

And

And that it is the first Reason that the Commons give your Lordships, why we cannot by any means admit of your Lordships Amendment, because *Throne* and *Government* are in the true construction the same; but the Exercise of the Government only (as you express it) and the Government it self (if your Reason conclude right) are not the same. And we are to reason from the words expressed in the Vote.

Next, my Lords, we say, It cannot be inferred from the words, as they rest in your Lordships Vote, That *only the Exercise of the Government, as to King James the Second, did cease.*

For if we read that part about Deserting the Government, with the rest of the Particulars that go before, his endeavouring to subvert the Constitution of the Kingdom, breaking the original Contract, violating the Fundamental Laws, and withdrawing himself out of the Kingdom; then can any Man of Understanding think that this deserting of the Government can be any thing else, but somewhat that is agreeable to all those precedent Acts, which are not a ceasing of the Exercise of the Government only, but a destruction of the Government it self.

But besides, my Lords, under Favour, the Administration or Exercise of the Kingly Government is in construction and consideration of Law all one and the same: And I think nobody that would reason aright from thence can say there is any distinction between Government and the Exercise of the Government; for whosoever takes from the King the Exercise of the Government, takes from the King his Kingship; for the Power and the Exercise of the Power are so joyned that they cannot be severed.

And the Terms themselves (taking them as the Law of England, which we are to argue from this Case, teacheth them) are so co-incident, that they cannot either subsist without consisting together: If a Man grant to another the Government of such a Place, this imports the Exercise of the Government there to be granted thereby.

As if the Islands belonging to this Crown and Dominion of England (as the Plantations abroad) if the King grants to any one the Government of *Jamaica*, or the like, sure no one will say, that That is not a Grant of the Exercise of the Government there.

So that where-ever a Government is granted, the Exercise of that Government is meant and included, and therefore the supposed Distinction may be something indeed, if they be only notionally considered; but it is a Notion altogether disagreeing to the Laws of England.

When your Lordships say in your Reasons, That the *Exercise of the Government as to King James the Second is censured*; which

which as far as you can go in this Point, the Commons can by no means agree to this Reason ; for by the words so used (*the Exercise ceased*) we apprehend, that you mean the Kingship continueth still in him, and that only the Exercise is gone.

And if it be so, and it be utterly unlawful, and as great a Crime (as what Law saith it is not ?) to make away from the King the Exercise of the Government, as to take from him the Government, then it may do well for your Lordships to consider, whether you are not Guilty of the same Crime and Thing which you would decline by your amendment.

The Commons therefore cannot admit, that there should be a taking away of the Exercise of the Government from the King, any more than the taking away the Government which (we say) he hath himself given away by *Abdication*. And if King *James* be our King still, we cannot by any means agree to the keeping of him out of the Kingdom ; for if it be his Right to be King still, God forbid but that he should enjoy it, and be admitted to the Exercise of it again.

Then, my Lords, for the Conclusion that your Lordships have added to your Reason (as making it from the very words of your Vote) that it is, *That it would infer such a Vacancy in the Throne, as that the Crown should thereby become Elective* ; this, we conceive, is a Conclusion, that hath no Premises either from our Actions, or our Sayings, or our Votes, or any thing else in this Case ; nay, it is quite varying from all the Premises : But when such a Conclusion can be shewn to follow from them, then it will be time enough for us to give our Answer to it.

But, my Lords, this is that we do insist upon ; That if the Right of Kingship be still (after all that is agreed on both hands) due to him, we cannot in Justice agree to keep him from it. And if it be not his due Right, but by these Acts, his subversion of the Constitution, his breaking the original Contract, and violation of the Fundamental Laws, he hath Abdicated it (as we say) and this Abdication hath put him by his Right, and so his Right is gone from him (as we conceive it is) ; then, I think, we may lawfully go on to settle the Peace and Welfare of the Nation.

But the Right to be still in him to have a Regency upon him without his own Consent, or till his Return, we take it to be a strange and impracticable thing, and would be introductive of a new Principle of Government amongst us. It would be setting up a Commonwealth instead of our ancient regulated Government, by a limited Monarchy ; then, I am sure, we should be justly blamed : And therefore we can by no means submit to your Lordships Alterations of our Vote,
upon

upon any of the Grounds and Reasons that have as yet been offered.

Earl of CLARENDON.

As to what Mr. *Polexfen* hath offered, I desire to observe a Word or two, and that is from the Commons Second Reason, for their Disagreeing to their Lordships Amendments.

You say there, That *the Commons do conceive they need not prove to your Lordships, that as to any other Person besides King James the Throne is also Vacant*: Doth not this shew, that the meaning of the Vacancy is a Vacancy throughout, as well as with respect to King *James*. I ask your Pardon if I do not declare my own Opinion about the Vacancy as to him; but all that I mention this for, is to know your Meaning in this Point, how far the Vacancy is to extend.

You said before, That *He had Abdicated the Government, and thereby the Throne was Vacant*. How is it Vacant? Is it only as to King *James*, or is it as to him and all or any of his Posterity, or any of those that are in the remainder in the Royal Line in Succession? If it be as to them too, then it must necessarily follow, that the Kingdom must thereby become Elective still, or the Government changed into a Commonwealth; neither of which, we hope, the Commons intend by it. And therefore that made me ask before what a grave and learned Gentleman meant when he said it should not be perpetually Elective.

Mr. Serjeant MAYNARD.

I am sure, if we be left without a Government, as we find we are (why else have we desir'd the Prince to take upon him the Administration?) I am sure we must not be perpetually under Anarchy, the Word *Elective* is none of the Commons Word; neither is the making the Kingdom Elective the thing they had in their Thoughts or Intentions; all they mean by this Matter, is to provide a Supply for this Defect in the Government, brought upon it by the late King's Male Administration. And I do say again, this Provision must be made; and if it be, that would not make the Kingdom perpetually Elective? I stand not upon any Word, but am for the Thing, that a Provision be made to supply the Defect.

Mr. POLEXFEN.

Do your Lordships agree, that the Throne is Vacant as to King *James* the Second? If so, or if you will say it is full of any body else, and will name whom it is full of, it will then

be time for the Commons to tell what to say to it. If your Lordships will please to shew that, we'll go on to give it an Answer.

Earl of CLARENDON.

Your own Words in your Second Reason are, That you need not prove to us, that it is to any other Person the Throne is also Vacant : Then how should we name who it is full of ? Admit for Discourse sake, but we do not grant it, for my part I do not. I say, taking it to be Vacant as to King James the Second, then you ask us, who it should be supplied by : Must it not be supplied by those that should have come if He were dead ?

For, I pray consider, I take this Government by all our Laws to be Hereditary Monarchy, and is to go in Succession by Inheritance, in the Royal Line ; if then you say this Government is Vacant, that would be to put all those by that should take the Succession, and that will make the Kingdom Elective for that time.

You say, *the Throne is Vacant* ; then I may very well ask who hath the Right of filling up that Vacancy ? We say, there is no Vacancy ; if there is, pray is there any Body that hath the Right of filling it up ?

Mr. Serjeant MAYNARD.

That is not the Question before us, yet that will come properly in debate when we are agreed upon the Vacancy.

The Noble Lord says, *It is by our Law an Hereditary Monarchy*. I grant it ; but though it should in an ordinary way descend to the Heir, yet as our Case is, we have a Maxim in Law, as certain as any other, which stops the Course ; for no Man can pretend to be King James's Heir while he is living : *Nemo est hares viventis*.

Earl of PEMBROKE.

To that Point I think my Lord of Clarendon gave an Answer, " That it should go to the next in the Line that were to take it, if the King were dead : for as we should be understood, we should make it a Case of Demise of our Kings, as our Law calls it ; that is, the King is dead in Law by this Abdication or Desertion of the Government, and that the next Heir is to take by descent.

You, Gentlemen, ask us who the Throne is full of ; I think it is sufficient to know that there are Heirs who are to take the Lineal Succession, though we do not, or cannot positively name

name the particular Person; and therefore we may well conclude there is no Vacancy.

Suppose I should be told such a Gentleman is in such a Room, and there I find him, and another Man with him, and I come out and tell you so, and ask which is he, you may be doubtful which of the two is the Man, but sure the one of them is he; but because you cannot tell which it is, shall I conclude no such one is there? If there be a doubtful Title (that is, dubious in whom the Title resides, but a certain Title as to some one) and I cannot directly name him that hath the immediate Right, yet it is sufficient to prevent the Vacancy, that there is an Heir or Successor, let him be who he will.

Mr. Serjeant MAYNARD.

But your Lordships will neither agree it is Vacant, nor tell us how it is Full. King *James* is gone, we hear or know of no other, What shall the Nation do in this Uncertainty? When will you tell us who is King, if King *James* be not? Shall we everlastingly be in this doubtful Condition?

Earl of PEMBROKE.

Sure, Mr. Serjeant *Maynard*, you will agree there is one, and no more than one, to whom a Right does belong of Succeeding, upon failure of King *James*. Has he no Heir known?

Mr. Serjeant MAYNARD.

I say, no Man can be his Heir while he lives. If he has any it is in *Nubibus*, our Law knows none; and, What shall we do till he be dead? It cannot descend till then.

Earl of PEMBROKE.

You agree, That notwithstanding King *Charles* the Second was abroad at his Father's Death, and did not actually Exercise the Government, yet in Law, immediately upon his Father's Decease, he was not the less Heir for that; nor was the Throne Vacant,

Mr. Serjeant MAYNARD.

That is not like this Case, neither because the Descent was Legally immediate; but here can be no such thing during King *James's* Life, as an Hereditary Descent: So that either here must be an everlasting War entail'd upon us, his Title

continuing, and we opposing his return to the Exercise of the Government; or we have no Government for want of a Legal Descent and Succession.

Pray, my Lords, consider the Condition of the Nation till there be a Government; no Law can be executed, no Debts can be compelled to be paid, no Offences can be punished, no one can tell what to do to obtain his Right, or defend himself from Wrong.

You still say, *the Throne is not Void*, and yet you will not tell us who Fills it. If once you will agree, *that the Throne is Vacant*, it will then come orderly in Debate, how it should, according to our Law, be filled.

Earl of NOTTINGHAM.

The Objection (as I take it) that is made to these Reasons, the Lords have given for their insisting upon the Amendments is, *That we have not fully answered in them the Reasons given by the Commons for their not agreeing to those Amendments.*

Mr. SACHEVERELL.

My Lords, we say you have not fully answered the first of our Reasons.

Earl of NOTTINGHAM.

Gentlemen, I intend to state the Objection so:

That first Reason of yours I take to be this in effect, That our word (*Deserted*) being applied to the Government, implies our Agreeing that the King hath deserted the Throne, those two being in true Construction the same; and then by our own Confession, the Throne is Vacant as to him.

To this you say, my Lords have given no Answer: Truly, I think it is a clear Answer, that the Word (*Deserted*) may have another Sense, and doth not necessarily imply *Renouncing* entirely of a Right, but a ceasing of the Exercise. But then, if that does not Vacant the Throne as to him, the other Reason comes to be considered, How came you to desire the Prince of Orange to take the Administration upon him, and to take care of Ireland till the Convention, and to write his Letters circularly for this Meeting? And to renew your Address to the Prince, and to appoint a Day of Publick Thanksgiving?

In answer to that, my Lords say, That tho' the King's *Deserting* the Government (as they agree he has done) did imply the Throne to be vacant, yet they might justly do all those Acts mention'd in the Common Reasons; because if barely the

the Exercise of the Government were *deserted*, there must be a supply of that Exercise in some Person's taking the Administration; and as none so fit, because of the Prince's relation to the Crown (and his presence here) to Address unto about it, so none so proper to make that Address as the Lords; for in the absence of the King they are the King and Kingdoms great Council, and might have done it by themselves without the Commons; but being met in a full representative Body, they joyned with them.

Mr. Polesfen indeed has said, *There is no distinction in Law between the Kingship and the Exercise of it.* And, That it is the same Crime, in consideration of Law, to take away the Exercise, as to take away the Kingship.

I shall not dispute with that Learned Gentleman (whom I very much Honour for his Knowledge in the Profession of the Law) what Offence either of them would be now, for we are not discoursing concerning a Regency, how the Government should be Administred, but we are barely upon the Question, Whether the Throne be vacant, so that we may have another King? But if we should grant a Vacancy, as to the King himself, we are then told, the next in Succession cannot take, because no one can be Heir to one that is alive. Yet, I think, the Answer given by my Lords before is a very good one, That *tho' the King be not dead Naturally, yet if (as they infer) he is so Civilly, the next of Course ought to come in as by Hereditary Succession*; for I know not any distinction between Successors in the case of a Natural Death, and those in the case of a Civil one.

For I would know if the next Heir should be set aside in this Case, and you put in another, whether that King shall be King of *England* to him and his Heirs, and so being once upon the Throne, the ancient Lineal Succession be altered? If that be so, then indeed it is sufficiently an Elective Kingdom, by taking from it the Right Heir.

If it be not so, then I would ask, Whether such King as shall be put in, shall be King only during King *James's* Life? That, I suppose for many Reasons, is not your meaning; but, at least he must be made King during his own Life; and then if there be a Distinction made as to the Succession between a Natural and a Civil Death, if King *James* should die during the Life of the new King, what would become of the Hereditary Monarchy? Where must the Succession come in, when the next Heir to King *James* may not be next Heir to the present Successor?

Therefore we must reduce all to this point, which my Lords have hinted at in their Reasons, Whether this will not make the Kingdom Elective? For if you do once make it Elective, I do not say that you are always bound to go to Election, but
it

it is enough to make it so, if by that President there be a Breach in the Hereditary Succession; for I will be bold to say, you cannot make a stronger Tye to observe that kind of Succession, than what lyeth upon you to preserve it in this Case.

If you are under an Obligation to it, it is part of the Constitution. I desire any one to tell me what stronger Obligation there can be; and that, I say, is Reason enough for my Lords to disagree to it, it bringing in the Danger of a Breach upon the Constitution.

Next, Gentlemen, I would know of you, if the Throne be vacant, whether we be oblig'd to fill it? if we be, we must fill it either by our old Laws, or by the Humour of those that are to chuse; if we fill it by our own old Laws, they declare, That it is an Hereditary Kingdom, and we are to take the next to whom the Succession would belong, and then there would be no need of standing upon a Vacancy.

If we are to fill it according to the Humour of the Times, and of those that are to make the Choice, that diverts the course of Inheritance, and puts it into another Line: And I cannot see by what Authority we can do that, or change our Ancient Constitution, without committing the same Fault we have laid upon the King.

These are the Objections against the Vacancy of the Throne, which occur to me; and We, Gentlemen, desire a satisfaction to them before we agree to the Vacancy.

And, I think, the Answering them, will lead us unto that which I take to be the main Point in Question, Whether the vacancy of the Throne, and filling it again, will not, as my Lords say, endanger the turning this Hereditary Monarchy of ours into an Elective one?

Mr. SACHEVERELL.

My Lords, it seems very strange to us, that this Question should be asked us, when we come to shew, That your Lordships Reasons for leaving out this part of our Vote are not satisfactory, neither do answer the Reasons we gave for our not agreeing to your Lordships Amendments: And it is much stranger that we should be asked, Whether this Vacancy extends to the Heirs, when you will not tell us, whether it be vacant as to King *James* himself.

You put it upon us to say, the Execution or Exercise of the Government is ceased; but you will not say the Throne is vacant, so much as to him: And if it be not, what have we to do, to consider, or debate, of any consequence, whether it will infer an Election or not?

We desire of your Lordships that which we think is very proper; first, to know whether the Throne be vacant at all?

If

If it be, then our Proposition in the conclusion of our Vote is true, *That the Throne is thereby vacant.*

My Lords, I think we come here very much in vain, till this Point be settled; What satisfaction can it be to your Lordships, or Us, or the Nation, to know that such things as are mention'd in the Votes have been done by King *James*, and that he has deserted (as you say) the Government, if he still retain a Right to it, and your Lordships will not declare he hath no Right, but amuse the Kingdom with the doubtful words of the *Exercise* (as to him) *Ceasing*. If that be all you mean, what need the Question be asked, how far it is vacant, for it should seem it is not vacant at all.

Earl of NOTTINGHAM.

Will you please to suppose it vacant as to King *James*, that is, that he hath no Right? Then let us go on to the next step.

Mr. SACHEVERELL.

That, my Lords, we cannot do, for all our business is to maintain our own, *That the Throne is vacant.*

Mr. SOMMERS.

My Lords, your Lordships, as a Reason against the Word *Abdicate*, say, *It is not a word known in our Common Law.* But the word *Vacant* about which we are now disputing, cannot have that Objection made to it; for we find it in our Records, and even apply'd in a parallel Case to this of ours, in 1 Hen. IV, where it is expressly made use of more than once, and there it doth import what I think it doth import in this Vote of the House of Commons, now in Debate, and to require any further or other Explication of it than the Record gives, will be very hard and unreasonable; for we are here to give the Commons Reasons for maintaining their own Vote, and nothing else.

If your Lordships please to look into the Record in that case, there was first a Resignation of the Crown and Government made and subscribed by King *Richard* the Second, and this is brought into the Parliament, and there they take notice, that the *Sedes Regalis* (those are the words) *fuit vacua*; and the Resignation being read both in *Latin* and *English*, in the Great Hall at *Westminster*, where the Parliament was then assembled, it was accepted by the Lords and Commons.

After that, it proceeds farther; and there are Articles exhibited against *Richard* the Second, and upon these Articles they

they went on to Sentence of Deposition and Deprivation, and then followeth the Words in the Record ; *Et confessum ut constabat ex pramissis Et eorum occasione Regnum Anglia cum pertinentiis suis vacare.* Then Henry the Fourth riseth up out of his Place as Duke of Lancaster, where he sat before, and standing so high that he might be well enough seen, makes this Claim to the Crown : The Words in the Record are, *Dictum regnum Angla sic ut pramitur Vacans una cum Corona vendicat.*

After that, the Record goeth on, That upon this Claim the Lords and Commons being asked, What they thought of it ? they unanimously consented, and the Arch-bishop took him by the Hand, and led him *ad Sedem Regalem prædictum, &c.*

Nay, and after all this, it is there taken Notice of, and particularly observed, that *prius Vacante sede Regali*, by the Leasion and Deposition aforelaid, all the publick Officers ceased ; There is Care taken for Henry IV's taking the Royal Oath, and granting of new Commissions.

My Lords, the Commons do therefore apprehend, that with very good Reason and Authority they did in their Vote declare *the Throne to be Vacant.* But as to the going farther to enquire into the Consequences of that, or what is to be done afterwards, is not our Commission, who came here only to maintain their Expressions in their Vote against your Lordships Amendments.

Earl of ROCHESTER.

In a free Conference the Points in question are freely and fully to be debated ; and, my Lords, in order to their Agreement with the Commons, are to be satisfied what is meant, and how far it may extend.

You, Gentlemen, that are the Managers for the House of Commons, it seems, come with a limited Commission, and will not enter into that Consideration which (as our Reasons express) hath a great Weight with my Lords, Whether this Vote of the Commons will not make the Monarchy of England, which has always heretofore been Hereditary, to become Elective ?

That the Vacancy of the Throne will infer such a Consequence, to me appears very plain : And I take it from the Argument that last Gentleman used for the Word *Vacant*, out of the Record of Richard the Second's time, that is cited for a Precedent for that Word. But as that is the only Precedent, yet it is attended with this very Consequence ; for it being there declared, That the Royal Seat was Vacant, immediately did follow an Election of Henry the Fourth, who was not next in the Right Line ; Did not then this Hereditary Monarchy

Monarchy in this Instance become Elective? When King *Charles* the Second dy'd, I would fain know whether in our Law the Throne was vacant. No sure; the next Heir was immediately in the Throne. And so it is in all Hereditary Successive Governments.

Indeed in *Poland* when the King dies there is a Vacancy, because there the Laws knows no certain Successor: So that the difference is plain, that where-ever the Monarchy is Hereditary, upon the Ceasing of him in Possession, the Throne is not Vacant; where it is Elective, 'tis Vacant.

Earl of CLARENDON.

I would speak one word to that Record which Mr. *Sommers* mentioned, and which the Lord that speak last hath given a plain Answer unto, by making that difference (which is the great Hinge of the matter in Debate) between Hereditary and Elective Kingdoms. But I have something else to say to that Record.

First, It is plain in that Case King *Richard* the Second had absolutely resigned, repounced, or (call it what you please) *Abdicated* in Writing under his own Hand. What is done then? After that, the Parliament being then sitting, they did not think it sufficient to go upon, because that Writing might be the Effect of Fear. And so, not voluntary; thereupon they proceed to a formal Deposition upon Articles, and then comes in the Claim of *Hen. IV.*

After all this, Was not this an Election? He indeed saith, That he was the next Heir, and claimed it by Descent from *Henry* the Third; yet he that was really the next Heir did not appear, which was the Earl of *March*; so that *Henry* the Fourth claimed it as his indubitable Right, being the next Heir that then appeared.

But, Gentlemen, I pray consider what follow'd upon it; All the Kings that were thus taken in (we say Elected, but the Election was not of God's Approbation) scarce passed any one Year in any of their Reigns, without being disturbed in the Possession.

Yet, I say, he himself did not care to owe the Crown to the Election, but Claimed it as his Right. And it was a plausible Pretence, and kept him and his Son (though nor without interruption) upon the Throne. But in the time of his Grandson *Henry* the Sixth, there was an utter Overthrow of all his Title and Possession too: For if you look into the Parliament Roll, *Edward IV.* the Proceedings against King *Richard* the Second, as well as the rest of the Acts during the Usurpation (as that Record rightly calls it) are annul'd,

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repeal'd,

repeal'd, revok'd, revers'd, and all the words imaginable added and put in, to set those Proceedings aside as illegal, unjust, and unrighteous. And, pray what was the Reason? That Act deduceth down the Pedigree of the Royal Line, from Henry the Third to Richard the Second, who dy'd without Issue, and then Henry the Fourth, (saith the Act) Usurped; but, That the Earl of March, upon the Death of Richard the Second, and consequently Edward the Fourth from him, was undoubted King, by Consensus, by Nature, by Custom, and by Law.

The Record is to be seen at length, as well as that 1 Henry IV, and being a latter Act is of more Authority.

And after all this, (I pray consider it well) the Right Line is restored, and the Usurpation condemn'd and repealed.

Besides, Gentlemen, I hope you will take into your consideration, what will become of the Kingdom of Scotland if they should differ from us in this Point, and go another way to work, then will that be a divided Kingdom from ours again. You cannot but remember how much Trouble it always gave our Ancestors, while it continued a divided Kingdom; and if we should go out of the Line, and invert the Succession in any point at all, I fear you will find a Disagreement there, and then very dangerous Consequences may ensue.

Sir ROBERT HOWARD.

My Lords, the Proceeding and Expressions of the House of Commons in this Vote are fully warranted by the President that hath been cited, and are such as wherein there has been no interruption of the Government according to the Constitution.

The late King hath, by your Lordships concession, done all those things, which amount to an Abdication of the Government, and the Throne's being thereby Vacant: And had your Lordships concurred with us, the Kingdom had long e'er this been settled, and every body had peaceably followed their own business. Nay, had your Lordships been pleased to express your selves clearly, and not had a mind to speak ambiguously of it, we had saved all this Trouble, and been at an end of Disputing.

Truly, my Lords, this Record that hath been mention'd of Henry the Fourth, I will not say is not a President of Election, for the Archbishop stood up, and looked round on all sides, and asked the Lords and Commons, *Whether they would have him to be King*; and they asserted, (as the words of the Roll are) *That He should Reign over them.* And so it is done at every Coronation.

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As to his Claim, they did not so much mind that, for they knew that he Claimed by Descent and Inheritance, when there was a known Person that had a Title before him.

For, that which a Noble Lord spoke of touching the Publick Acts that have been done since the King left us, I may very well say, we think them Legally done; and we do not doubt but that Power which brought in another Line then, upon the vacancy of the Throne by the Leasion of *Richard the Second*, is still, according to the Constitution, residing in the Lords and Commons, and is legally sufficient to supply the Vacancy that now is.

That the Noble Lord indeed said, That your Lordships might not only with the Commons advise the Prince of *Orange* to take upon him the Administration, and joyn with us in the other things; but that you might have done it of your selves, as being in the absence of the King, the Great Council of the Nation.

My Lords, I shall not say much to that Point, your Lordships Honours and Privileges are great, and your Councils very worthy of all Reverence and Respect.

But I would ask this Question of any Noble Lord that is here, Whether, had there been an Heir, to whom the Crown had quietly descended in the Line of Succession, and this Heir certainly known, your Lordships would have assembled without his calling, or would have either Administer'd the Government your selves, or advised the Prince of *Orange* to have taken it upon him? I doubt you had been (pardon me to say it) all guilty of High-Treason, by the Laws of *England*, if a known Successor were in possession of the Throne, as he must be if the Throne were not Vacant.

From thence, my Lords, your Lordships see where the Difficulty lyes in this matter, and whence it ariseth, because you would not agree the Throne to be Vacant, when we know of none that possess it.

We know some such thing hath been pretended to as an Heir Male, of which there are different Opinions, and in the mean time we are without a Government; and, Must we stay till the Truth of the matter be found out? What shall we do to preserve our Constitution, while we are without a safe or legal Authority to act under the same according to that Constitution, and in a little time it will, perhaps, through the distraction of our Constitution, be utterly irremediable?

I do not deny, but that your Lordships have very great Hardships to conflict with in such a Case, but who is the occasion of them?

We all do know the Monarchy is Hereditary ; but how, or what shall we do to find out the Successor in the Right Line?

You think it will be a difficult thing to go upon the Examination who is Heir ; perhaps it will be more difficult to Resolve in this Case, than it might be in another : For though heretofore there have been *Abdications* and *Vacancies*, it has been where the King has been of the same Religion of the Establish'd Worship of the Nation ; and amongst those that pretended to the Succession, the several Claimers have been Persons born and bred up in that Religion that was Establish'd by Law ; or it may be there have been a Child in the Womb at the time of the Vacancy.

But then, my Lords, there would not be much difficulty to examine, Who should Inherit, or what were fit to be done. I confess, I say, there are Difficulties of all sides, or else your Lordships sure would have spoke out before now : And if you had been clear in it your selves, you would have let the Commons and the World have known it. But it not being clear, must we always remain thus ? Use what words you will, *Fill up*, or *Nominate*, or *Elect*, it is the thing we are to take care of, and it is high time it were done.

My Lords, There is no such Consequence to be drawn from this Vote, as an Intention or a Likelihood of altering the Course of the Government, so as to make it Elective, the Throne hath all-along descended, in an Hereditary Succession, the main Constitution hath been preserved.

The President of *Henry* the Fourth is not like that of Elections in other Countries ; and I am sorry there should be any occasion for what is necessary to be done now.

But when such Difficulties are upon the Nation, that we cannot extricate our selves out of the Lineal Successor, your Lordships, I hope, will give us leave to remember *Salus populi est suprema Lex*.

And if neither you nor We can do any thing in this Case, We, who are met under the Notion of an Assembly or Convention of the States, then have met to no Purpose ; for after we have Voted our selves to be without a Government, (which looks as if something were really intended as to a Settlement) all presently sinks, and we are as much in the Dark as we were before.

And, my Lords, I pray give me leave to say one thing more : Your Lordships say, You will never make a President of Election, or take upon you to alter the Succession.

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With your Lordships Favour, the Settlement of the Constitution is the main thing we are to look after. If you provide for the supply of the Defect there, that Point of the Succession will, without all question, in the same Method, and at the same time, be surely provided for.

But, my Lords, you will do well to consider: Have not you your selves already limited the very Succession, and cut off some that might have a Line at Right? Have you not concurred with us in our Vote, *That it is inconsistent with our Religion and our Laws to have a Papist to Reign over us?* Must we not come then to an Election, if the next Heir be a Papist? Nay, suppose there were no Protestant Heir at all to be found, would not your Lordships then break the Line?

But your Lordships Vote that is so inconsistent, you do suppose a Case of the greatest Consequence that can be, may happen; and if that should happen to be our Case, that the whole Protestant Line should fail, would not that necessitate an Election, or else we must submit to that which were inconsistent with our Religion and our Laws?

If your Lordships then, in such a Case, must break through the Succession, I think the Nation has Reason to expect you should take care to supply the present Defect, where the Succession is uncertain.

My Lords, If this should not be agreed unto, what will be the Consequence? We that used, and justly, to boast of living under the Best of Governments, must be left without any one; for, your Lordships, it seems, cannot agree with us to Supply and Fill up this Gap in it, or tell us who is the Successor: And we must not do it our selves by Election; which is the only way left us to provide for our Settlement.

Truly my Lords, upon the whole, I cannot tell what Condition we shall be in, or what we can do farther; but we must even part, and break up in Confusion, and so leave the Nation to extricate it self, as well as it can, out of this Distraction. But then, at whose Door that will lye, I must leave to your Lordships own Thoughts.

Earl of PEMBROKE.

We have indeed passed such a Vote, as that Gentleman says, against a Popish Prince's Reigning over us; but I should think that amounts to no more than a Resolution, that by a Law to be made we will take care of it in Parliament: Therefore I think that which we aim at, and that which the Constitution of our Government does require, is, to put things in a legal Method: And, in order to do it, I would have the legal Successor Declared and Proclaimed, and then a Parliament

ment summoned in that Prince's Name, and the whole Matter settled there.

An Act made by a King *de facto*, is Void as to a King *de jure*; therefore I would have the Constitution preserved, and would desire, that all that is done in this Matter may be again done in Parliament.

Earl of CLARENDON.

Sir Robert Howard was pleas'd to say, That by the same Method that the Throne now should be Filled, by the same the Successor should be Declared, and the Right Line Settled. Is not that declaring the Crown to be Elective?

Suppose you say nothing but Fill the Throne, Is it not to take away the Right Line of Inheritance? And, Will not such a Successor claim it for his Posterity?

Truly, I think, if the Right Line be declared in the same way that the Successor is, then we take upon us to dispose of the Inheritance of the Crown absolutely; which, I think, by all the Law I ever read or could hear of among us, is out of our Power; and, that neither House, or both Houses together, have Power to do any thing relating to the Succession, but by Act of Parliament; which the two Houses by themselves cannot make.

Sir RICHARD TEMPLE.

I think we are now going too far in this Matter; the Question before us is only, *Whether there be a Vacancy in the Throne*. After we have done with that, I do not see how this will preclude the Consideration of any Claim to the Succession.

My Lordships say, You are under great Difficulties upon this Subject. But, my Lords, till you have declared the Throne Vacant, I must presume to say, I do not see how it is possible for any of us to make one Step towards a Settlement.

If there be any Claims to the Crown, that Consideration will be next; and how to come at them, I conceive we are in the same Capacity as our Predecessors were to provide for all Exigencies as shall emerge, and for the supplying all Defects in the Government.

It is true by the Acts of Queen Elizabeth and King James, I we have the Oaths of Supremacy and Allegiance that are to be, and have been taken by all Persons.

But, my Lords, there is an old Oath of Fidelity, that useth to be required in Leets, and that by the ancient Law of England every Man ought to take that is Sixteen Years of Age; and

and this was as much obliging to the King, his Heirs and Successors, as any of those later Oaths are; for they seem only to be made to exclude foreign Authorities; and not to infer any new Obedience or Subjection: Therefore I am only saying, we are in as natural a Capacity as any of our Predecessors were to provide for a Remedy in such Exigencies as this.

I do not intend to trouble your Lordships any farther than the Words of the Vote lead me.

If the Throne were Full, what do we do here; nay, how came we hither? I would fain know, whether all that is mention'd in one of our Reasons of the Administration being committed to the Prince, and those other Acts, do not all imply, at least, that we are in such a Case as wherein the Throne is Vacant, otherwise, if it had been Full, I appeal to any one, whether we could have assembled or acted in any other Name, or by any other Authority, than his that fill'd it? Then do not all these things declare, that there is a Vacancy?

My Lords, I have done, having said this, That it is a subsequent Consideration, how the Throne shall be Filled, and all the Particulars that relate to it remain entire, after this Resolution taken.

But, I think, we are at present to go no farther. No Man, I hope, thinks there is a just Ground for any Apprehension of an Intention to change the Government; I am sure there is no Ground for any such Apprehension: So that we have all the Reason in the World to insist, That your Lordships should agree with us, that the Throne is Vacant, or we shall not be able to move one Step farther towards a Settlement.

Sir THOMAS LEE.

My Lords, So much has been said in this Matter already, that very little is to be added.

But give me leave to say unto your Lordships, That those Amendments your Lordships have made to the Commons Vote are not agreeing with your other Votes, nor any of the Acts done since the Abdication. Had it been in the common ordinary Case of a Vacancy by the King's Death, your Lordships in December last would sure have let us know as much: But is plain you were sensible we were without a Government, by your desiring the Prince to take the Administration, and to issue out his Letters for this Convention.

But, my Lords, I would ask this Question, Whether upon the Original Contract there were not a Power preserved in the Nation to provide for its self in such Exigencies?

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That Contract was to settle the Constitution as to the Legislature, which a noble Lord in the beginning spoke of; so we take it to be: And it is true, that it is a part of the Contract, the making of Laws, and that those Laws should oblige all sides when made; but yet so, as not to exclude this original Constitution in all Governments that commence by Compact, That there should be a Power in the States to make Provision in all Times, and upon all Occasions, for extraordinary Cases and Necessities, such as ours now is.

I say nothing now as to the Hereditary Succession; our Government has been always taken to be Hereditary, and so declared when there has been occasion to make Provision otherwise than in the direct Line.

But our Matter is singly upon a Point of Fact, Whether the Throne be Vacant (as the Commons say it is) by the Abdication of King *James* the Second.

The present Vacancy is nearest that of *Richard* the Second, of any that we meet with in our Records; and the Phrase being there used, we insist upon it as very proper. And when that is agreed unto, the House will, no doubt, declare their Minds in another Consequential Question that shall arise in a proper way. But this is all we can speak to now.

Sir GEORGE TREBY.

To discourse, Whether the Crown of *England* would by this Means become Elective, is altogether unnecessary; and, I think, your Lordships have given no Reasons that are sufficient to make the Objection out, neither any Answers to the Commons Reasons for their Vote.

It seems to me an odd way of Reasoning, first to mistake the Meaning, and then give Reasons against that mistaken Meaning.

The Question is only here, Whether we can make good this Proposition, *That the Throne is Vacant by the Abdication of the late King.*

I confess, 'tis a melancholy thing to discourse of the Mis-carriages of Governments, but 'tis much more afflictive to talk of unhinging all the Monarchy by a breach upon the direct Line of the Succession, as, if the Crown of *England* did actually descend to *Lewis* the Fourteenth, it would not be in the Power of the States of this Kingdom to divolve it upon another Head.

A Noble Lord put an Instance of Two Men in one Room, one of whom was really such a one: But though a stander by could not directly tell which was he, yet it could not be said by

By him, that such a one was not there. But, if you please, I will put this Case:

Suppose there were two Men in one Room, that no one alive could tell which was which; as suppose this to be the Case of the Two Children of *Edward the Fourth*, that they had been kept close Prisoners by their Uncle *Richard the Third* so long, that there were no living Witnesses able to tell which was the eldest of the Two, that would occasion a Difficulty much as intricate as ours here. One of them must be Eldest, but by Reason of the Uncertainty, must not an Election be made of them? And could any thing else do but an Election?

But, I say, the proper single Question here is, Whether we have well affirmed upon the Premises that are mentioned in the former part of the Vote, That he has *Abdicated*, and that *the Throne is thereby Vacant*.

Your Lordships in part agree; for you say, *He has Deserted the Government*; then you say, *He is not in it*. And it is as much as to say, He has left the Kingdom destitute of a Government.

Now if there be any Sense in which our Proposition is true, will you deny the whole Proposition, because it may be taken in a Sense that is dubious and uncertain, as to the Consequences.

You cannot say the Throne is Full: If then there be a Doubt with you, to be sure it is not like to be evident to us, especially in this Case, considering who your Lordships are.

You are the Persons that usually are, or ought to be, present at the Delivery of our Queens, and the proper Witnesses to the Birth of our Princes. If then your Lordships had known who was on the Throne, we should certainly have heard his Name from you, and that had been the best Reason against the Vacancy as could have been given.

My Lords, We say no more than our Ancestors have said before us, as you see by the Parliament-Roll, *Henry IV*; and I must maintain the Record to this Purpose, that the Government is Vacant, and it is there declared, as it is expressed in our Vote: So that we have not invented or coined a Word for our Turn, neither is the Notion new, it is a Word that has been used before in a Case as near this as any can be.

But it is objected, That that should be no President, because of what follow'd upon that Vacancy of the Throne. I desire that your Lordships would read the Record.

The next thing there, is, *Henry the Fourth cometh himself, and says, He claimed the Crown as descended from Henry*

the Third, and the Lords and Commons assented. It is true, the Arch-Bishop did propose him (as was usual at Coronations) and he did there actually ask them, *Whether they did chuse him for their King?* They agreed to it; and the Arch-Bishop makes a Discourse upon the Virtues of a Man to Govern the Nation better than a Child; and then he is placed on the Throne. And this I take to be a proper, plain, applicable President in our Case.

But that noble Lord's Objection strikes at the very Heart of it, if the Objection be rightly made, That all these Proceedings, and so consequently the Words and Phrases there used, are all repealed, 1 *Edw.* 4.

My Lords, It is very well known, and readily agreed by us, that *Edward* the Fourth came in in disaffirmance of the Title of the House of *Lancaster*.

As those Times went, whenever there was any Turn in Government (as there were several) there were new and contrary Declarations about the Title to the Crown, made constantly in Parliament; and what one Parliament had settled, another undid.

But then this Advantage we have on our side, that as we have this first President for us, so we have the last; for I need go no farther than the Parliament Roll of 1 *Henry* VII. 12. 16. where the Record is set right again.

The Act for Deposing *Richard* the Second is indeed by 1 *Edw.* IV. Repealed, and saith, That *Henry* the Fourth usurped the Crown, and murder'd *Richard* the Second; and thereupon it proceeds to attaint *Henry* the Sixth. But then comes in *Henry* the Seventh, and in *Henry* VII. there is an Act made, that sets aside all the Acts and Attainders made against his Line, and consequently repealed 1 *Edw.* IV; which repealed 1 *Henry* IV.

And I would observe one thing by the way concerning *Henry* the Seventh: He was of the Line of *Lancaster*, and when he came to the Crown, would not endure to have his Crown reckoned only Matrimonial, or suffer the Title to go in the Names of *Henry* and *Elizabeth*, as he must have done if he had stuck to the Title of the Right Line of Succession; no, he always stood up for his own Title, though he had the Heiress of the House of *York* in his Bosom.

Therefore, my Lords, his Act for restoring the Record of 1 *Henry* IV. again, is as good an Authority as it was before, and somewhat better; for it hath the last Act on its side, which is unrepealed to this Day.

Earl

Earl of PEMBROKE.

Henry the Seventh had a good Right and Title by Marriage to the Crown, in re *Uxoris*. No one can question but his own Title, as descended from Henry the Fourth, was an Usurpation; and he would not suffer any one to prescribe which Title was best, as long as it was acknowledg'd he had one good one.

That this Kingdom is Hereditary we are not to prove by President in the List of our Kings and Queens; for we shall scarce find above Three in any direct Line, without some Interruption; and therefore we are not to fetch our Presidents, or Proofs, so far as those Days. And this I speak for the Reason which was hinted before.

The Laws made are certainly part of the *Original Contract*; and by the Laws made, which establish the Oath of Allegiance and Supremacy, we are ty'd up to keep in the Hereditary Line, being Sworn to be true and faithful to the King, his Heirs and Successors; whereas the old Oath was, only to bear true Allegiance to the King. There (I take it) lies the Reason why we cannot (of our selves) without breaking that Contract, break the Succession, which is settled by Law, and cannot be altered but by another, which we our selves cannot make.

Mr. GEORGE TREBY.

Your Lordship is pleas'd to say, Henry the Seventh's Title by Descent was an Usurpation. I think it is pretty hard to determine what Title he did govern by, since though his Wife was the Lineal Heir, yet she had no Part, or so much as a Name in the Administration. And if it were too great an Issue to be try'd then, it will be harder to do it now. And it has been said, It was his Mother's Counsel to him, not to declare particularly upon what Foot his Title stood.

But, my Lords, if we should allow none for Acts of Parliament but those that were made in the Reigns of Hereditary Kings, and in the Right Line, I doubt we should want the greatest part of those Laws that compose the Volume of Statute-Books, and the Records by which we enjoy a great part of our Inheritances and Possessions.

Mr. Serjeant

Mr. Sergeant MAYNARD.

If we look but into the Law of Nature (that is above all Humane Laws) we have enough to justify us in what we are now doing, to provide for our selves and the Publick Weal in such an Exigency as this.

Sir RICHARD TEMPLE.

If Laws made about the Succession be so obliging, what then shall we say to the Succession of Queen *Elizabeth*, who had an Act of Parliament (to the keeping of which an Oath was required) against both her and her Sister.

Earl of PEMBROKE.

But to shew what Opinion she her self and the wise Men of her Times had, and were of, in this Point, there is an Act made in her Reign, and yet in being, which declares it to be a *Præmunire* to affirm, the Parliament cannot settle the Succession of the Crown, or alter it. Entails in Parliament have been of the Crown, both Ancient and Modern, yet the Authority of another subsequent Act has prevail'd against such an Entail : So that it should be done, I say, in Parliament.

Sir RICHARD TEMPLE.

I think we are in as full a Capacity to take Care of the Government as any of our Predecessors, in such an Exigency ; and if we do as they have done before us, that is, not to be called a changing of the Monarchy from an Hereditary to an Elective.

Earl of NOTTINGHAM.

After this long Debate, pray let us endeavour to come as near as we can to an Agreement : We have proposed some Questions, about which my Lords desired to be satisfied ; You, Gentlemen, have not been pleased to give an Answer to them, and We have no great Hopes of getting one from you, as this Debate seems to be managed.

On your part you have declared, That you do acknowledge the Monarchy is Hereditary and Successive in the Right Line ; then I cannot see how such an Acknowledgement consists with the Reasons you give for your Vacancy ; for I cannot imagine how a Kingdom can be an Hereditary Kingdom,
and

and that King who hath Children now in being (at the time of his forsaking the Government) can have the Throne Vacant both of him and his Children.

The Course of Inheritance, as to the Crown of England, is, by our Law, a great deal better provided for, and runs stronger in the right Line of Birth than of any other Inheritance. No Attainder of the Heir of the Crown will bar the Succession to the Throne, as it doth the Descent to any common Person. The very Descent, by Order of Birth, will take away any such Defect.

And so was the Opinion of the Great Lawyers of England, in the Case of *Henry the Seventh*. Then cannot I apprehend how any Act of the Father's can bar the Right of the Child (I do not mean that an Act of Parliament cannot do it); I never said so, nor thought so, but, I say, no Act of the Father's alone can do it, since even the Act of the Son, which may endanger an Attainder in him, cannot do it, so careful is the Law of the Royal Line of Succession. This is declar'd by many Acts of Parliament, and very fully and particularly by that Statute 27 *Henry the Eighth, Cap. 22*, entituled, *An Act concerning the King's Succession*; where the Succession of the Crown is limited to the King's Issue-Male first, then Female, and the Heirs of their Bodies one after another, by course of Inheritance, according to their Ages, as the Crown of England hath been accustomed and ought to go in such Cases.

If then the King hath done any thing to divest himself of his own Right, it doth not follow thence, that That shall exclude the Right of his Issue; and then the Throne is not Vacant, as long as there are any such Issue; for no Act of the Father can Vacant for himself and Children.

Therefore if you mean no more than but the divesting his own Right, I desired you would declare so: And then suppose the Right gone as to him, yet if it descend to his Lineal Successor, it is not Vacant.

And I told you, One Reason my Lords did stand upon against agreeing to the Vacancy, was, Because they thought your Vote might extend a great deal further than the King's own Person,

But your all owning it to be a Lineal Inheritance, and this Vacancy, methinks, do not by any means consist.

You declare, you never meant to alter the Constitution; then you must preserve the Succession in its ancient Course: So I did hear a worthy Gentleman conclude it to be
your

your Intention to do. But by what methods it can be done in this Case by us? I desire to be satisfied in a few things about this very matter.

I desire first to know, Whether the Lords and Commons have Power by themselves to make a binding Act or Law? And then I desire to know, whether according to our Ancient Legal Constitution every King of *England*, by being seated on the Throne, and possessed of the Crown, is not thereby King, to him and his Heirs? And without an Act of Parliament, (which we alone cannot make) I know not what Determination we can make of his Estate.

It has been urg'd indeed, That we have in effect already agreed to what is contain'd in this Vote, by Voting, That it is inconsistent with our Religion and Laws to have a *Papish Prince* to Rule over us.

But I would fain know, Whether they that urge this, think that the Crown of *Spain* is Legally and Actually excluded from the Succession by this Vote?

No Man sure will undertake to tell me, That Vote of either House, or both Houses together, can alter the Law in this or any other Point.

But because I am very desirous that this Vote should have its Effect, I desire that every thing of this Nature should be done in the ancient usual Method, by Act of Parliament.

G O D forbid that since we are happily deliver'd from the Fears of *Popery* and *Arbitrary Power*, we should assume any such Power to our selves; What Advantage should we then give to those who would quarrel with our Settlement for the Illegality of it? Would not this, which we thus endeavour to crush, break forth into a Viper?

For the Record of *1. Henry the Fourth*, I acknowledge the Words of the Royal Seat being Vacant are us'd. But since you your selves tells us of it, That *Henry the Fourth* did Claim by Inheritance from his Grandfather, that methinks may come up to what I would have the declared Sense of Both Houses upon this Question; (to wit) The Throne might be Vacant of *Richard the Second*, but not so Vacant but the Claim of the immediate Successor was to take place, and not be excluded, but entirely preserved.

And *Richard the Second* seems to have had the same Opinion, by delivering over his Signet to them.

Our Laws know no *Inter regnum*; but upon the Death of the Predecessor the next Heir is King in *uno & eodem instanti*.

It was so Resolv'd even in *Richard* the Second's own Case; for at his Grandfather's Death it was a Question, Whether King *Richard* the Second, or the Eldest Son of his Grandfather then living, should succeed; and it was Resolved, That he ought to have it, because of his Right of Inheritance: Which is the more remarkable, because of the Contest.

And when *Richard* the Third usurped his Crown, to make his Claim good to the Right of Inheritance, he Bastardized his own Nephews.

And so it was in all the Instances of the Breaches that were made upon the Line of Succession, which were some Seven (but all Illegal); for such was the Force of the Laws, that the Usurpers would not take the Crown upon them, unless they had some specious pretence of an Hereditary Title to it.

That which I would have Avoided by all means, is, the Mischievous Consequences that I fear will ensue upon this Vacancy of the Throne, (to wit) the utter Overthrow of the whole Constitution of our Government. For if it be so, and the Lords and Commons only remain as part of it, will not this make the King one of the Three Estates? Then is he the Head of the Commonwealth, all united in one Body under him. And if the Head be taken away, and the Throne Vacant, by what Laws or Constitution is it that we retain Lords and Commons? For they are knit together in their Common Head; and if one part of the Government be dissolved, I see not any Reason but that all must be dissolved.

Therefore 'tis of very great importance that we come to an Explanation, how far you mean the Throne to be Vacant; and that if it reach to the King and his Heirs, (notwithstanding all the Acts of Parliament about the Succession) we may consider how the Consequences of that will effect the Constitution; for I presume to say, it may then be in your power as well as to say, we shall have no King at all.

I was mistaken by the Gentlemen who took notice of what I said the Lords might do of themselves, in the absence of the King: I would not be understood to say, the Government devolved upon the Lords; but I may say they are the Government's great Council in the Interval of Parliaments, and may have greater sway by the Privilege of their *Birth*, in the Exigencies of the State: As appears in several Instances, and particularly the first of *Henry* the Sixth, and during his Infancy.

There

There was a Case put by one Gentleman, about the two Sons of Edward the Fourth being kept Prisoners so long, till it could not be known by any Living Witnesses which was the Eldest: I would only ask that Gentleman, Whether in that Case he would say the Throne were Vacant; certainly there would have been One in the Throne.

But then it followeth, that though their should be an Uncertainty of the particular Person, yet that would not infer a Necessity that the Throne should be vacant.

Upon the whole Matter, you seem to understand your own words to signifie less than they do really import.

I do not find that you purpose to make the Kingdom Elective; and yet you talk of supplying the Vacancy by the Lords and Commons.

You do not say, That the King has left the Crown for himself and his Heirs; and, yet your words speak of a Vacancy, and nothing of the Succession; but you do not tell us what you mean.

Therefore if this matter were explained, that my Lords may know how far the Intention of the Vote reacheth, that it may not, abroad, or hereafter, be construed to go beyond such Meaning, (that is) as to the King himself, and not to his Heirs, perhaps there might quickly be a happier Accommodation than can be expected while things remains thus, still indoubt, and in the dark.

Gentlemen, If any of you can settle this Matter in its true Light, it would do very well; and it is You must do it; for the Words are Yours, and so we must be told your Signification and Intention by your selves.

If you mean by *Abdication* and *Vacancy* only that the King has left the Government, and it is Devolved upon the next Successor, that may perhaps satisfy my Lords, and we may agree upon some Settlement.

I must confess any Government is better than none; but I earnestly desire we may enjoy our Ancient Constitution.

Therefore I again renew my Request, That you would come to such an Explanation, as may breed an Union between the two Houses, for the strength of your Consultation and Resolutions in this great Emergency.

If the Kingdom were indeed Elective, we were in a Capacity of Electing, but *pro hac Vice*, according to the Constitution, this Question would be greater than what it was before; but then the great Debate in it would only be, Who should first have the Honour of laying the very Foundation of the New Government.

But

But as this Case stands upon the Foot of our Ancient Laws, and Fundamental Constitution, I humbly beseech you to consider, Whether at the same time that in this way you get an Establish'd Government, you do not overturn all our Legal Foundations.

Mr. PAUL FOLEY.

I hope, my Lords, there is no danger of shaking our Fundamentals in this Case; but we are pursuing those Methods that agree with our Laws and Constitution: For though the Monarchy of this Nation be Hereditary in the ordinary course of Succession, yet there may fall out a Case wherein that cannot be comply'd with, and a plain Vacancy may ensue. For, put the Case the whole Royal Line should fail, (as they are all Mortal as well as we our selves are) should we in that Case have no Government at all? And who then should we have but the Lords and Commons? and I think that case comes nearest to the Case in Question, where the Successor is not known; for if he had been, we should have heard of him before now. And, what is the reason that it shou'd then in the former Case devolve to Lords and Commons, but that there is no King? And they being the Representative Body of the Kingdom, are the the only remaining apparent parts of the Government, and are only to supply the Defect by providing a Successor. And, is here not the same Reason here? We are without a King, I am sure I do not know of any that we have: If that fall out to be the Case now, that will inter a Vacancy with a Witne's, and it will be of necessity that the Lords and Commons take care to supply it.

Mr. G——— E———e.

My Lords, We are led, and, I think, out of the Way, into a very large Field, hunting after the Consequences of a Vote not yet settl'd or agreed unto: We have, as I conceive, nothing but the Vote it self to consider of, or debate upon: We do not intend to prejudice any Legal Right: But what the consequences of this Vote may be, before the Vote it self be passed, I believe no Man can reasonably pretend to ascertain, unless we have the Spirit of Prophecy.

The Throne may be vacant as to the Possession, without the Exclusion of one that has a Right to the Succession, or a dissolution of the Government in the Con-

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stitution; neither will there be room for the Objection of a King *de facto*, and not *de jure*, which some of the Lords were please to express their Fears of.

This Gentleman that stands by me instanced in a Record, and that was mistaken as a President for the proceeding in this Case; it was only mention'd by him to shew, That by using the word *Vacant*, the Commons did no more than our Ancestors did before us; and therefore it was not an unknown word or thing to have the Throne *Vacant*.

We do apprehend we have made a right and apt Conclusion from the Premises, for otherwise all the Vote is but Historical.

We declare the late King hath broke the Original Contract, hath violated the Fundamental Laws, and hath withdrawn himself out of the Kingdom, that he hath *Abdicated*, actually Renounced the Government.

What occasion was there for such a Declaration as this, if nothing were concluded from it? That were only to give the Kingdom a Compendious History of those Miseries they have too well learnt by feeling them.

Therefore there was a necessity to make some Conclusion; and none so natural as this; That we are left without a King in the words of the Vote; That the Throne is thereby *Vacant*, which it may be as to the Possession, and yet the Right of Succession no way prejudiced.

But, my Lords, we come here, by the Commands of the House of Commons, to debate the Reasons of their Vote and your Lordships Amendments, not to dispute what will be the Consequences, which is not at present our Province.

And so the Conference ended, and the Members of each House returned to their respective Houses.

Die Jovis Septimo Feb. 1688.

A MessAge from the Lords, by Sir *Robert Atkins* and Sir
Edward Nevill.

Mr. Speaker,

The Lords have Commanded us to tell you, That they
have agreed to the Vote sent them up of the 28th of *Ja-*
nuary last, (touching which there was a free Conference
yesterday) without any Alterations.

F I N I S.

Die Jour Sepimus Feb. 1688.

Λ *From the Lords, by Sir Robert Atkins and Sir*

Mr. Speaker,
The Lords have Commanded us to tell you, That they
have agreed to the Petition presented them of the 23rd of
July last (touching which there was a free Conference
yesterday) without any Alteration.

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